Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens

Commissioner
The Honourable W.D. Parker

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Commission of Inquiry
into the Facts of Allegations of
Conflict of Interest Concerning
the Honourable Sinclair M. Stevens

Commission d'enquête
sur les faits reliés à des allégations
de conflit d'intérêts concernant
l'honorable Sinclair M. Stevens

CANADA

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TO HER EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL

MAY IT PLEASE YOUR EXCELLENCY

By Order in Council PC-1986-1139 dated May 15th, 1986, I was appointed Commissioner to inquire into the matter of alleged conflict of interest. I now beg to submit the attached Report.

Respectfully submitted.

Commissioner

C.P. / P.O. Box 7075, Succursale Adelaide Station
Toronto, Canada M5C 2K7

P.C. 1986-1139

CANADA

PRIVY COUNCIL

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by Her Excellency the Governor General on the 15th day of May, 1986.

The Committee of the Privy Council, on the recommendation of the Prime Minister, advise that pursuant to section 37 of the Judges Act, the Honourable William Dickens Parker, be authorized to act as a Commissioner and that a Commission do issue under Part I of the Inquiries Act and under the Great Seal of Canada appointing the Honourable William Dickens Parker, to be a Commissioner to inquire into and report on

(a) the facts following allegations of conflict of interest made in various newspapers, electronic media and the House of Commons, with respect to the conduct, dealings or actions of the Honourable Sinclair M. Stevens; and

(b) whether the Honourable Sinclair M. Stevens was in real or apparent conflict of interest as defined by the Conflict of Interest and Post Employment Code for Public Office Holders and the letter from the Prime Minister to the Honourable Sinclair M. Stevens of September 9, 1985; and

The Committee do further advise that the Commissioner be authorized,

(a) to adopt such procedures and methods as he may consider expedient for the proper conduct of the inquiry and to sit at such times and at such places as he may decide;

.../2

(b) to engage the services of such staff and counsel as he may consider necessary or advisable, at such rates of remuneration and reimbursement as may be approved by the Treasury Board;

(c) to engage the services of such experts and other persons as are referred to in section 11 of the Inquiries Act who shall receive such remuneration and reimbursement as may be approved by the Treasury Board; and

(d) to rent office space and facilities for the Commission's purposes in accordance with Treasury Board policy; and

The Committee do further advise that the Commissioner be directed to submit a report in both official languages to the Governor in Council as soon as possible, and to file his papers and records with the Clerk of the Privy Council as soon as reasonably may be after the conclusion of the inquiry.

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P. Tellier

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CONTENTS

Abbreviations xiv
Preface xv

Part One
Introduction

Chapter 1 The Inquiry, the Allegations, and the Terms of Reference 3
The Inquiry 3
The Allegations 3
The Scope of the Terms of Reference 5

Chapter 2 Conflict of Interest Rules: Guidelines, Code, and Letter 13
The Applicable Conflict of Interest Regime 13
Requirements of the Guidelines and the Code 14

Chapter 3 The Definition of Conflict of Interest 25
Real Conflict of Interest 25
Apparent Conflict of Interest 30
Definitions 35

Part Two
Business Interests

Chapter 4 Mr. Stevens' Background and Ministerial Responsibilities 39
Personal Background 39
Ministerial Responsibilities 42

Chapter 5 The York Centre Group of Companies 47
Direct Holdings of Sinclair Stevens: Gill Construction Limited and Stevens Securities Limited 47
Indirect Holdings of Sinclair Stevens: York Centre Corporation and Other Companies 49
Officers and Directors 57

Other Relationships among the Companies 62
Summary 66

Chapter 6 Financial Condition of the York Centre Group of Companies 69
The Consolidated Financial Statements of York Centre 69
Chronology of Events Relating to Financial Condition 70
Conclusions 84

Chapter 7 Mr. Stevens' Role in the York Centre Group of Companies to September 1984 87
Role in Financial Intermediaries 88
Role in York Centre 89
Role in the Oil and Gas Companies 91
Role in the Real Estate Companies 92
Role in the Strip Bond Companies 93
Conclusions 94

Chapter 8 Compliance with the Guidelines, Code, and Letter 97
The Guidelines 97
The Code and Letter 100
Summary 106

Part Three
Mr. Stevens' Involvement in Private Business Matters while a Minister of the Crown

Chapter 9 The Meetings with Mel Leiderman 109
Meeting of March 16, 1985 110
Meeting of April 13, 1986 112

Chapter 10 Involvement in the La Ronge Goldplay 117
Meeting and Conversations with Mr. Donald Busby 117
Conversation with Mr. Robert Callander 121
Conversation and Meetings with Mr. Ronald Netolitzky 122
Conclusions 124

Chapter 11 Involvement in the Christ Coin Proposal 127
Background 127
Development of the Christ Coin Proposal 128
Discussions with Chase Manhattan 131
Conclusions 133

Chapter 12 The Meeting with Angus Dunn of Morgan Grenfell 135
Description of Events 135
Conclusions 137

Chapter 13 The Approach to Tom Kierans of McLeod Young Weir 139
Description of Events 139
Conclusions 142

Chapter 14 The Call to Ken Leung of Olympia & York 145
Description of Events 145
Conclusions 146

Chapter 15 York Centre Group Financial Materials Found in the Minister's Office 149
Description of Events 149
Conclusions 151

Chapter 16 The Meeting with Ron Graham 153
Description of Events 153
Conclusions 154

Chapter 17 The Role of Shirley Walker 157
Nature of Role 157
The Diaries 162
Conclusions 182

Chapter 18 The Role of Noreen Stevens 185
Nature of Role 186
Communication between Mr. and Mrs. Stevens 198

Chapter 19 General Conclusions about Mr. Stevens' Knowledge of or Involvement in Private Business Matters while a Minister of the Crown 207

Part Four
The Allegations of Conflict of Interest

Chapter 20 The Allegations Relating to Magna 211
Nature of the Allegations 211
Magna and DRIE 211
Transaction with Anton Czapka 232
Findings Regarding Conflict of Interest 257
Magna's Interest in Canadair 259

Chapter 21 The Allegations Relating to CDIC and Bay Street 265
Brascan and CDIC Assets 266
Award of Contracts to Burns Fry and Dominion Securities 278
Award of the Contract to Gordon Capital 286
The CDC Share Sale 288
Conclusions Relating to CDIC and Bay Street 296

Chapter 22 The Allegations Relating to Hyundai 299
Newmarket Parts Plant 300
FIRA Commitment and the Memorandum of Understanding 300
Bromont Automotive Assembly Plant 303
Evidence Relating to Links between Hyundai and the Hanil Bank 306
Conclusions 307

Chapter 23 The Allegations Relating to the Mingling of Private and Public Business 309
The Meeting with Chase Manhattan Bank Officials 309
The Meeting with Mr. Dunn of Morgan Grenfell 312
The Meeting with Mr. Kierans of McLeod Young Weir 313
The Telephone Call to Mr. Leung of Olympia & York 315
Visit to the Hanil Bank in Seoul, South Korea 317

Chapter 24 The Allegations Relating to Compliance with the Guidelines, Code, and Letter 327
The Blind Trust Was Not Blind 327
The Blind Trust Was Not Appropriate for a Family Business 330

Part Five
Conclusions and Recommendations

Chapter 25 The Inquiry Process 333

Chapter 26 Conclusions about Mr. Stevens' Conflict of Interest 339
Allegations Not Pursued in this Inquiry 339
General Conclusions about Conflict of Interest 340

Chapter 27 Recommendations for Reform 343
Disclosure, Divestment, and the Role of the Blind Trust 344
Declaration of Interest and Withdrawal (Recusal) 353
Disclosure of Spouse's Financial Interests and Activities 354
Office of the ADRG 358
Final Observations and Proposals for Reform 360

Appendices

A Parties with Counsel Appearing at the Inquiry 365
B Parties Making Written Submissions to the Commission 369
C List of Witnesses 370
D Inquiry Schedule 374
E Conflict of Interest Guidelines for Ministers of the Crown 376
F Conflict of Interest and Post-Employment Code for Public Office Holders 395

G Letter of Prime Minister Pierre Elliott Trudeau, April 28, 1980 431
H Letter of Prime Minister Brian Mulroney, September 9, 1985 433
I Blind Trust Agreement between Sinclair McKnight Stevens and The National Victoria and Grey Trust Company 442
J The Criminal Code: Sections 110(1), (2), (3); 111 449
K Rulings 451

Sources for the Study of Conflict of Interest 455

Abbreviations

ADRG	assistant deputy registrar general
BB	Inquiry designation for Shirley Walker diaries, series 1
CBCA	Canada Business Corporations Act
CCERD	Cabinet Committee on Economic and Regional Development
CDC	Canada Development Corporation
CDIC	Canada Development Investment Corporation
CEIC	Canada Employment and Immigration Commission
CIBC	Canadian Imperial Bank of Commerce
DRIE	Department of Regional Industrial Expansion
EDB	Economic Development Board
ERDA	Economic Redevelopment Agreement
FIRA	Foreign Investment Review Agency
GPT	general preferential tariff
IRD program	Industrial and Regional Development Program
MOU	memorandum of understanding
PIP	Petroleum Incentive Program
SMDC	Saskatchewan Mining Development Corporation
SW	Inquiry designation for Shirley Walker diaries, series 2
YCC	York Centre Corporation
YCPL	York Centre Properties Limited

Preface

The Honourable Sinclair M. Stevens resigned from the federal cabinet on May 12, 1986, in the wake of conflict of interest allegations relating to his responsibilities as a minister of the Crown. The conflict of interest allegations were made in the media and in the House of Commons and concerned Mr. Stevens' activities as the cabinet minister responsible for regional economic development, foreign investment review, and privatization. The allegations referred to private financial dealings with the same individuals or firms that were doing business with Mr. Stevens' government department and suggested numerous instances of conflict of interest on the part of Mr. Stevens as a minister of the Crown.

Following the initial news reports in late March and early April 1986, the allegations multiplied in number and became even more serious and wide ranging. In addition to the specific conflict of interest charges, there were more general allegations of influence peddling, breach of public trust, and corruption. As a result of the growing controversy, and shortly after Mr. Stevens' resignation from the cabinet, this Commission of Inquiry was established, and I was directed to inquire into the facts following these allegations and report on whether Mr. Stevens was in real or apparent conflict of interest under the code of conduct governing public office holders.

This is my report. It is divided into twenty-seven chapters grouped under five parts. Part One consists of three introductory chapters, the first containing a discussion of the allegations and the terms of reference of the Inquiry. Well over one hundred allegations were made, but they can be grouped under five heads: one, that Mr. Stevens was in a conflict of interest in his dealings with Magna International Inc., a large manufacturing firm; two, that Mr. Stevens was in a conflict of interest in his dealings with the Canada Development Investment Corporation and certain Bay Street investment firms; three, that Mr. Stevens was in a conflict of interest with regard to the auto manufacturer Hyundai Corporation; four, that he was in a conflict of interest because he mingled private and public business; and five, that he failed to comply with the Conflict of Interest Guidelines for Ministers of the

Crown and the regime that replaced these guidelines, the Conflict of Interest and Post-Employment Code for Public Office Holders.

Having summarized the allegations, I then describe in Chapter 2 the conflict of interest regimes to which Mr. Stevens was subject as a member of the cabinet. This discussion of the two relevant conflict of interest regimes underscored the fact that in neither one was conflict of interest defined. I concluded that such a definition was essential if I was to discharge my mandate. In Chapter 3, I develop a set of definitions for real and apparent conflict of interest.

Part Two of the report deals with Mr. Stevens' business interests and his involvement in these interests to September 1984, when he was appointed to the cabinet. In the first chapter, Chapter 4, I briefly describe Mr. Stevens' background and ministerial responsibilities. In Chapters 5, 6, and 7, I describe the York Centre group of companies, their overall financial condition, and Mr. Stevens' role in the companies to September 1984. I conclude this part with a description of the steps taken by Mr. Stevens in September 1984 to comply with the conflict of interest rules.

In Part Three I examine the extent to which Mr. Stevens remained involved in private business matters after September 1984 and his appointment to the cabinet. Eight specific incidents are examined. I also examine the roles that were played by Shirley Walker and Noreen Stevens and the nature and extent of their communication with Mr. Stevens. With this background I am better able to draw conclusions about Mr. Stevens' involvement in private business matters while a minister of the Crown.

In Part Four I turn to the public side and the conflict of interest allegations. Chapters 20 to 24 are devoted to a detailed analysis of the allegations as set out under the five categories. I make certain findings under each category and draw certain conclusions.

Part Five completes the report. It contains my final comments and observations. Chapter 25 provides a detailed description of the inquiry process and the procedures that were employed. Chapter 26 contains a summary of my conclusions regarding the conflict of interest allegations. Chapter 27, the final chapter, is devoted to my recommendations for reform.

It is my hope that this final chapter will be of some assistance to those who are involved in the reform of the present system. This Inquiry has had a unique opportunity to explore the practical workings of the conflict of interest regime that is presently in place. My observations and recommendations emerge from the lessons of this Inquiry. Four issues with respect to conflict of interest kept arising during the course of the Inquiry: one, what assets and activities should cabinet ministers have to disclose and how should assets be divested; two, should cabinet ministers be obliged to declare their interests and withdraw when necessary from certain responsibilities; three, what should be required of spouses of cabinet ministers; and, four, what should the responsibilities be of the office of the Assistant Deputy Registrar General. These issues I discuss in some detail in the final chapter.

I must say in closing that the conduct of this long and complicated Inquiry and the preparation and writing of this final report would not have been possible without the cooperation of all those who participated in the process. I thank Commission counsel and Commission staff for their effectiveness and their energy. I also thank counsel for all the parties, and for the many witnesses who gave evidence in the Inquiry. Their sense of commitment and cooperation is recognized and much appreciated. Finally I wish to offer my personal thanks to those members of the public who gave evidence before me and thereby enabled me to make the findings of fact recorded in this report.

William D. Parker
Commissioner

Part One

Introduction

Part One consists of three introductory chapters. The first contains a discussion of the allegations and the terms of reference of the Inquiry. The second describes the conflict of interest regimes to which Mr. Stevens was subject as a member of the cabinet. The third chapter provides a definition for real and apparent conflict of interest.

Chapter 1

The Inquiry, the Allegations, and the Terms of Reference

The Inquiry

On May 15, 1986, the Government of Canada by Order in Council P.C. 1986–1139 constituted a commission of inquiry appointing and directing me to inquire into and report on:

> (a) the facts following allegations of conflict of interest made in various newspapers, electronic media and the House of Commons, with respect to the conduct, dealings or actions of the Honourable Sinclair M. Stevens; and
>
> (b) whether the Honourable Sinclair M. Stevens was in real or apparent conflict of interest as defined by the Conflict of Interest and Post Employment Code for Public Office Holders and the letter from the Prime Minister to the Honourable Sinclair M. Stevens of September 9, 1985. . . .

Following my appointment I began the task of conducting this Inquiry. I engaged Commission counsel and sufficient staff to assist with the investigation of the allegations. I issued an invitation to interested parties to come forward, and many did. Twelve parties were granted standing. All parties and almost all of the witnesses were represented by counsel.

I then proceeded to hear all of the evidence. The public hearing process was lengthy and complex. It lasted from July 1986 to February 1987 and involved over 90 witnesses and thousands of pages of documents. After the public hearing phase concluded, I invited and received oral and written submissions from those wishing to make them and then began to work on this report. I am pleased to provide a more detailed description of the proceedings of the Inquiry in Chapter 25 of the report.

The Allegations

My first task is to set out the allegations. At the commencement of the Inquiry, Commission counsel prepared and filed as exhibit 5 a book itemizing all of the various allegations made in the House of Commons and in the media. Exhibit 5 represents a list of all the allegations, in the words of the acting prime minister, "both temperate and intemperate." Counsel for Mr. Stevens and the Government of Canada urged upon me that instead of adopting a checklist approach to these allegations, I should distil them into groups and I do so below. A comparison of the contents of exhibit 5 with the five categories of allegations listed below will demonstrate that there are intemperate allegations, for example, the allegation that Mr. Stevens instituted "a true system of payoff," or that his government department was "more open to corruption than most," which are not encompassed in any one of the five categories. The reader will understand that such accusations were not supported by any evidence and have clearly not been made out. It is unnecessary for me to deal with them on an individual basis. What is left are the five categories of allegations about which evidence was tendered and with which I am required to deal.

The allegations may be summarized as follows:

1. It is alleged that, in his dealings as the minister responsible for the Department of Regional Industrial Expansion (DRIE), Mr. Stevens was in a position of conflict of interest with regard to:

   - loans, grants, and other assistance from that department to Magna International Inc. (Magna); and
   - Magna's proposal to acquire an interest in Canadair Ltd. (Canadair);

   because his wife, Noreen Stevens, had obtained a $2.6 million loan for Cardiff Investments Ltd. (Cardiff) from 622109 Ontario Inc., a numbered company controlled by Anton Czapka, a Magna-related individual.

2. It is alleged that, in his dealings as the minister responsible for the Canada Development Investment Corporation (CDIC), Mr. Stevens was in a position of conflict of interest with regard to:

   - the appointment of the CDIC directors and the decision to permit companies associated with certain directors to acquire CDIC assets;
   - the award of, and approval of fees for, advisory contracts to Burns Fry Ltd. (Burns Fry) and Dominion Securities Ltd. (Dominion Securities);
   - the award of, and approval of fees for, an advisory contract to Gordon Capital Corporation (Gordon Capital); and
   - the sale of shares of the Canada Development Corporation (CDC);

   because Noreen Stevens and Edward (Ted) Rowe, president of York Centre Corporation (York Centre), were approaching CDIC director J. Trevor Eyton, president of Brascan Ltd. (Brascan), and senior officials in Burns Fry, Dominion Securities, and Gordon Capital for financial advice or assistance on behalf of York Centre.

3. It is alleged that, in his dealings as the minister responsible for Investment Canada, Mr. Stevens was in a position of conflict of interest with regard to Hyundai Corporation (Hyundai):

   - by waiving a commitment made to the Foreign Investment Review Agency to export certain quantities of goods from Canada; and
   - by awarding substantial federal government assistance to Hyundai to establish an automotive assembly plant in Bromont, Quebec;

   because of his companies' obligations to the Hanil Bank of Canada (Hanil Bank), a subsidiary of a bank in which Hyundai was a major shareholder, and his desire to ensure that a parts plant was built in his riding.

4. It is alleged that, in his dealings as a minister responsible for DRIE and CDIC, Mr. Stevens was in a position of conflict of interest because he mingled his private interest and the public interest.

5. It is alleged that Mr. Stevens failed to comply with the Conflict of Interest Guidelines for Ministers of the Crown (guidelines) and the Conflict of Interest and Post-Employment Code for Public Office Holders (code) and an explanatory letter of the prime minister dated September 9, 1985 (letter), in that:

   - the blind trust was not blind because he continued to have knowledge of his private business affairs and his spouse managed the assets in the blind trust; and
   - the blind trust was an inappropriate method of divestiture for a closely knit "family" business.

The Scope of the Terms of Reference

As noted earlier, this Commission of Inquiry was established to inquire and report on:

> (a) the facts following allegations of conflict of interest made in various newspapers, electronic media and the House of Commons, with respect to the conduct, dealings or actions of the Honourable Sinclair M. Stevens; and
>
> (b) whether the Honourable Sinclair M. Stevens was in real or apparent conflict of interest as defined by the Conflict of Interest and Post Employment Code for Public Office Holders and the letter from the Prime Minister to the Honourable Sinclair M. Stevens of September 9, 1985. . . .

During the course of the Inquiry questions were raised by some counsel as to the scope of my terms of reference. The questions that were raised can be summarized under two heads:

- First, are some of the allegations that may involve conflict of interest too broad and general to be considered as allegations into which I am to inquire and report?
- Secondly, should I report on those allegations involving breaches of the blind trust or the code of conduct that are not allegations of conflict of interest by themselves?

Inquiry into the General Allegations of Conflict of Interest

In construing the terms of reference, counsel for Mr. Stevens urged that I ought to find that the words used in part (a) of the Order in Council, "to inquire into and report on (a) the facts following allegations of conflict of interest," meant the facts relating to allegations of conflict of interest made in the media and the House of Commons. Further, it was argued that this "re-writing" of the Order in Council is necessitated if the terms of reference "are to make sense." Counsel for Mr. Stevens argued that it follows from this interpretation that the terms of reference confine the scope of this Inquiry only to those specific allegations which are in fact allegations of conflict of interest made prior to Mr. Stevens' resignation on May 12, 1986. It is readily apparent that many allegations involving breaches of the code of conduct governing public office holders, including breaches of the blind trust, are not conflict of interest allegations per se.

In accordance with this interpretation, counsel for Mr. Stevens submitted that there are basically only three allegations of conflict of interest that fall within the terms of reference. These are the allegations relating to Mr. Stevens' dealings with Magna, Hyundai, and certain Bay Street financiers. All counsel agree that the scope of the Inquiry extends at least to an examination of the facts relating to these allegations and the question of whether Mr. Stevens was in these instances in a position of real or apparent conflict of interest.

Mr. Stevens' counsel submitted that any consideration by me of the "mingling of government and private business" as a fourth distinct allegation would be erroneous and outside the terms of reference. Counsel, in his written argument on behalf of Mr. Stevens, stated that the mixing of government and private business

> is not a separate allegation of conflict of interest but simply one way of defining conflict of interest. The phrase was used by John Turner during a radio interview. The statement was made to describe how he characterized Stevens' conduct relating to the Magna Allegation and the Bay Street Allegation. There are no facts forming part of this allegation as there are in the case of the other allegations, which

> further confirms that this is not an allegation the facts of which are to be investigated.
>
> (Submission of Sinclair M. Stevens, p. 5)

On this basis, counsel for Mr. Stevens submitted that incidents about which the Commission heard extensive evidence involving James (Jim) Stewart of the Chase Manhattan Bank, Angus Dunn of Morgan Grenfell & Co. Ltd. (Morgan Grenfell), Kenneth (Ken) Leung of Olympia & York Developments (Olympia & York), Thomas (Tom) Kierans of McLeod Young Weir Ltd., and Mr. Stevens' Korean visit to the Hanil Bank are not within the terms of reference of the Commission and that I should therefore make no report regarding them.

Counsel for the Government of Canada did not join with counsel for Mr. Stevens in seeking so restrictive an interpretation of the terms of reference. Counsel's written submission argued that the Order in Council "is predicated on a *conflict* of interest, i.e. an improper mingling of a minister's public duty and his private interest" and invited the Commission to decide whether the minister was in real or apparent conflict of interest. As I understand this submission, the Government of Canada urged the Commission to investigate and report on all incidents of conduct that could give rise to a finding that Mr. Stevens was in a position of real or apparent conflict. This of course would include incidents involving the mingling of public and private business as is said to have occurred with Jim Stewart, Angus Dunn, Ken Leung, Tom Kierans, and Mr. Stevens' Korean visit to the Hanil Bank.

The interview referred to by counsel for Mr. Stevens was the interview given to CFRB Radio in Toronto by John Turner, leader of the opposition, on May 12, 1986. It included the following statement: "The tragedy of Sinclair Stevens is that he mingled and his family mingled their own private family interests with the way they were handling the public interests, the way that department was being managed" (Exhibit 224).

This very general allegation was made in the first few moments of the interview and well before any discussion of Mr. Stevens' dealings with Magna or the Bay Street brokers. Although this was an allegation of conflict of interest, the question posed by counsel for Mr. Stevens is whether either its generality or context preclude me from treating it as a separate and distinct allegation.

Although admittedly no facts form part of the allegation, its generality does not necessarily alter its character as an allegation. In this context it is noteworthy that the terms of reference themselves failed either to enumerate the instances of alleged conflict into which I was to inquire or to define the meaning to be attributed to the word allegation. In the absence of any definition or limitation, the word allegation ought to be given its natural and ordinary meaning without the artificial restriction suggested by counsel for Mr. Stevens.

This broad interpretation of the word allegation is not only consonant with the ordinary and natural meaning of the word but also clearly reflects the intention of the government in drafting the terms of reference. A statement made by the acting prime minister, Erik Nielsen, to the House of Commons on May 14, 1986, in response to questions about the scope of the Inquiry is of some assistance:

> As I have assured the House on Monday, Tuesday, and again today, the terms of reference will take into account the allegations made in the House of Commons, both temperate and intemperate. They will take into account the allegations made in the newspapers, both temperate and intemperate. They will take into account the allegations made in the electronic media, both temperate and intemperate. It will be in the context of the conflict of interest Code of Conduct for public office holders, in addition to the Prime Minister's letter of September 9 to the former Minister and other members of his Ministry.
>
> (Canada, House of Commons, *Debates*, May 14, 1986, p. 13,260)

Logic does not dictate that the absence of a specific factual underpinning to the allegation alters its character as an allegation. This is especially so in light of the terms of reference, which make it my obligation to find the facts in relation to these allegations.

I also reject the submission of counsel for Mr. Stevens that it is clear from the context of Mr. Turner's remarks that he was referring specifically to the loan made by Anton Czapka or to the approaches to Bay Street brokers. To the contrary, I find that the statement made by John Turner is sufficiently separated from the discussion of the Czapka loan or the Bay Street brokers to constitute an independent allegation that Mr. Stevens mingled his private interest with his public duties as a minister responsible for a department of government. Therefore I decline to accept the submissions of counsel for Mr. Stevens, and find that the mingling of private interests and public interests is indeed an allegation of conflict of interest that I must investigate and report on.

Allegations Relating to the Blind Trust or Code of Conduct

There remains the second issue involving the terms of reference of the Commission: whether I should inquire into matters of non-compliance with the guidelines and code or breaches of the blind trust which do not necessarily involve conflicts of interest, real or apparent. Counsel on behalf of the Government of Canada and Mr. Stevens both submitted that these matters were outside the terms of reference of the Commission. In his written argument on behalf of the Government of Canada, counsel stated:

> It is difficult to see how this allegation fits into the Commission's mandate except, indirectly, as part of the Commission counsel's attack on Mr. Stevens' credibility. Undoubtedly the Guidelines and Code imposed on Mr. Stevens a duty to establish and comply with the terms of the blind trust. But the mandate of this Commission is

> directed to the issue of whether specific allegations of conflict of interest — real or apparent — are well founded, not whether Mr. Stevens observed the procedural steps contemplated by the Code as a precaution to prevent "potential" conflicts from arising.
>
> . . . The Code itself draws a clear distinction between compliance "in form" and compliance "in substance." Following the recommended procedures does not necessarily save a Minister from conflicts. Conversely, failure to follow recommended "avoidance" procedures does not necessarily place a Minister in conflicts.
>
> Section 5(2) of the Code says explicitly that:
>
> > Conforming to this Code does not absolve public office holders of the responsibility to take such additional action as may be necessary to prevent real, potential or apparent conflicts of interest. (Exhibit 7, tab 7, p. 2)
>
> Conversely, violations of a blind trust may put a public office holder in breach of the Code, and may expose him or her to potential conflicts, but a breach of the Code's procedural requirements does not itself amount to a conflict of interest.
>
> (Submission of the Government of Canada, pp. 19–20)

This submission is at first blush persuasive. However, it leaves unanswered those numerous allegations made in both the House of Commons and in the media which involved the minister's compliance with the guidelines and those regarding his activities, or those of his spouse Noreen Stevens, which involved breaches of the blind trust. These allegations were summarized by Commission counsel in exhibit 5 and a sampling is sufficient to make the scope of these allegations apparent. They are as follows:

- Even though the Minister's interests had been placed into a blind trust, his family and former associates were still very much involved in their continuing operation.

- It's one thing if a Minister puts one hundred shares of a widely-held public company like Bell Canada into a blind trust; the trustee may sell them the next day and buy shares of Canadian Pacific and the Minister would never know. But it's another thing entirely when — as was the case with Stevens — a Minister's family firm is put into a blind trust; the trustee is obviously not going to sell it. So the Minister knows he still owns it and can conceivably take advantage of this knowledge. Or his wife can.

- The Minister's trustee must have been aware of the loan negotiations and approved them. If the trustee, National Trust, was not aware and did not approve, that would make even more ridiculous than now the use of the blind trust gimmick as a way of avoiding conflict of interest problems. It would mean that for all real purposes the trustee was the Minister's wife.

- Stevens and his wife short-circuited the system — when the spouse is an officer of their joint company, the barrier insulating the blind trust from the Minister is too easily broken. The private interests of the

Minister and his spouse are indistinguishable and his blind trust is not nearly blind enough.

- The "so-called" blind trust was a "farce": "it was not blind, it was not at arm's length, we had active participation by the Minister's spouse on his behalf . . ."
- The Minister does not have a blind trust if his wife was part of the management.
- There cannot be a blind trust when the Minister's wife is running one of the subsidiaries, his law firm is attached to their own offices and his telephone number is the number of subsidiaries.
- Because of the contact between husband and wife, an arm's length relationship cannot be maintained between the Minister and his holdings. Handing his affairs over to his spouse was not sufficient.
- The Minister's blind trust looks like a "transparent ruse" if his wife was still running the business — getting up in the morning and having toast and coffee with the Minister, and then setting off to seek million-dollar loans for one of his companies from people dealing with his department. How blind was this trust!?
- The ADRG did no investigation beyond speaking to the Minister.

(Exhibit 5, pp. 1–3)

My fact-finding mandate is described in paragraph (a) of the terms of reference. I am required to find the facts following allegations of conflict of interest made in the House of Commons and the media. I find that the words conflict of interest in the context of my fact-finding mandate extend to the facts of all allegations that relate to conflict of interest issues generically, such as breaches of the blind trust or procedural non-compliance with the code. This interpretation coincides with the interpretation given in the House of Commons by Erik Nielsen in answer to a question posed by another member of the House about the scope of this Inquiry. If the government had intended that I refrain from finding the facts relating to certain clear allegations such as that the blind trust was not blind, not blind enough, or a ruse, I have no doubt it would have made its intention known in unambiguous terms.

It is noteworthy that counsel for the government and counsel for Mr. Stevens concede that evidence of Mr. Stevens' knowledge of his financial interests is an essential finding of fact in any determination of whether he was in real or apparent conflict. However, the issue of Mr. Stevens' knowledge and the manner in which it was obtained are also inextricably interwoven with issues regarding Mr. Stevens' compliance with the guidelines and code. Therefore, on the view of my mandate urged by counsel for Mr. Stevens and the Government of Canada, the facts of Mr. Stevens' knowledge must be found by me in the discharge of my fact-finding mandate.

However, the effect of counsels' submission is that, although I should find the facts in relation to such matters as Mr. Stevens' knowledge, I should stop there and not draw any conclusions about whether such facts disclose a violation of the guidelines or code. This is nothing short of inviting me to find facts in a vacuum, without identifying their ultimate meaning. Such a position is inconsistent with the effective discharge of my mandate, and I therefore hold that conclusions with respect to compliance are a necessary part of the fact-finding process with which I am charged.

Further, conclusions regarding Mr. Stevens' compliance with the code have a significant bearing upon his credibility. Under oath at this Inquiry, Mr. Stevens testified as follows:

> Q. First of all, at page 2 of Exhibit 211, in your letter to the Prime Minister, which was dated May 11, 1986, in the second paragraph you wrote:
>
> > "I have repeatedly stated that I have complied fully with the provisions of the Conflict of Interest Code for public office holders, as well as with the provisions contained in your letter to ministers, dated September 9, 1985."
>
> That was the text of your letter at the time, sir?
>
> A. That is right.
>
> Q. Would it be fair, and I want to be fair here, to confirm that your intent was to say that you complied fully with the Code that was in existence in 1984 when you were appointed to the Cabinet in addition to that which was in existence at the time that this letter was written?
>
> A. I had complied fully with the Code in both instances, if that is the thrust of your question.
>
> (Transcript, vol. 71, p. 12,141)

A few moments later, Mr. Stevens was asked by Commission counsel about his present position:

> Q. In respect of all of these statements that were made at the time, I gather from your evidence in chief that, effectively, you reassert them at this stage in this Inquiry; is that right, sir?
>
> A. Yes.
>
> (Transcript, vol. 71, p. 12,147)

It is obvious that such assertions bear fundamentally on Mr. Stevens' credibility. For this reason as well I find that the matter of whether Mr. Stevens acted in violation of the guidelines or code of conduct or in breach of the provisions of the blind trust is one that I am duty bound to inquire into and report on.

In sum, I conclude that my terms of reference include general allegations of conflict of interest, such as the "mingling of government and private business," and also the allegations relating to the blind trust.

Chapter 2

Conflict of Interest Rules: Guidelines, Code, and Letter

This chapter describes the rules relating to conflict of interest in place during the period between September 1984 and May 1986. A proper understanding of the rules is necessary to draw conclusions about whether Mr. Stevens complied with them, conclusions I have determined are inherently part of the fact-finding process with which I am charged.

As a preliminary matter I address the issue of which rules were in force during the period in which most of the events comprising the allegations took place.

The Applicable Conflict of Interest Regime

During this period the Government of Canada had in place two regimes to deal with conflicts of interest and ministers of the Crown. The first was contained in the guidelines (Appendix E) that were released together with a letter of commentary by Prime Minister Pierre Elliott Trudeau on April 28, 1980 (Appendix G). When the present administration came to power in September 1984 the guidelines were continued in effect pending a complete review of conflict of interest matters within the public service. Following this review, a new regime was announced by Prime Minister Brian Mulroney in the House of Commons on September 9, 1985, embodied in the code (Appendix F), the text of which was released that day together with a letter of commentary (the letter) from the prime minister (Appendix H).

The code took effect on January 1, 1986. Under section 74 of the code, however, a minister continued to be governed by the guidelines until a review of his or her compliance arrangements was completed. In the case of Mr. Stevens, this review was completed on April 11, 1986; therefore, until that date he was subject to the guidelines.

The matter is of some significance because my terms of reference direct me in part to inquire into and report on

> whether the Honourable Sinclair M. Stevens was in real or apparent conflict of interest as defined by the Conflict of Interest and Post

Employment Code for Public Office Holders and the letter from the Prime Minister to the Honourable Sinclair M. Stevens of September 9, 1985.

I must determine how these terms can be construed in light of my finding that, during the period in which almost all the activities giving rise to the allegations took place, Mr. Stevens was subject to another conflict of interest regime.

There can be no serious question that my task is to assess the allegations in light of the applicable regime. The applicable regime was for the most part the guidelines, not the code. However, this finding does not alter my task appreciably since there is no substantial difference of concept, policy, or language between the two regimes. As well, neither contains an explicit definition of conflict of interest, and thus the definition itself, dependent on outside sources, does not vary. Further, all counsel dealing with the regimes addressed both of them. Finally, to interpret my terms of reference literally, as precluding analysis and consideration of the guidelines, would mean having to determine whether Mr. Stevens was in real or apparent conflict of interest as defined by a regime to which he was not subject, and so would be unfair to him.

To give meaning to my terms of reference, therefore, I have concluded that I must consider both regimes. In doing so, I am satisfied that I am neither altering in any meaningful way the ambit of my instructions, nor prejudicing Mr. Stevens. An examination of relevant provisions of the guidelines and code follows.

Requirements of the Guidelines and the Code

The Guidelines

The provisions of the guidelines can be divided into two parts, the first consisting of a number of general statements that attempt to express the high standards of conduct expected of ministers, and the second consisting of procedural requirements and techniques which, if followed by ministers, may minimize the risk that they will fail to abide by the standards. The guidelines state explicitly that merely complying with the letter of the procedural requirements may not suffice. They are designed only to assist in maintaining high standards of conduct, and no more.

The general statements of principle in the guidelines (set out in Sections I and III) are as follows:

1) The onus for preventing real, apparent or foreseeable conflicts of interest rests with the individual;
2) Ministers must perform and appear to perform their official responsibilities and arrange their private affairs in a manner that will conserve and enhance public confidence and trust in

> government and that will prevent conflicts of interest from arising;
>
> 3) Ministers must not take advantage or appear to take advantage of their official positions, or of information obtained in the course of their official duties that is not generally available to the public;
>
> . . . .
>
> Ministers shall not accord preferential treatment in relation to any official matter to relatives or friends or to organizations in which their relatives or friends have an interest.
>
> Ministers must also take care to avoid placing, or appearing to place, themselves under an obligation to any person or organization which might profit from special consideration or favour on their part.

The guidelines contain various techniques to assist ministers in determining which assets or activities can or cannot continue to be held or pursued. These techniques are **disclosure** (of assets and activities); **divestment** (of assets); and **avoidance** (of activities). The guidelines also classify a minister's assets as **exempt, discloseable,** or **controlled,** to determine if they need to be disclosed or divested.

Disclosure

The first step in the sequence of compliance is confidential disclosure, which requires that ministers make a full report to the prime minister through the assistant deputy registrar general (ADRG) of all assets and liabilities and certain specific activities and positions. These activities and positions include any partnerships, directorships, and corporate executive positions held during the two years preceding appointment (with the nature of the business, and the responsibilities carried, indicated) as well as all executorships or trusteeships.

Public disclosure is a possible next stage in the disclosure process. Ministers may be required to make a public disclosure of some or all assets, depending on their classification. They must also make a public disclosure of the activities and positions listed in their confidential disclosure.

Divestment

The nature of an asset determines whether disclosure is sufficient or divestment is required. As mentioned, the guidelines classify a minister's assets as exempt, discloseable, or controlled for the purpose of deciding which treatment is needed.

A minister's exempt assets are defined in Section V(A) as "property which is for the personal use of Ministers and their families" or "assets not of a commercial character." Such assets need not be publicly disclosed or divested. Section V(A) also sets out a number of examples, such as "self-administered registered retirement savings plans composed exclusively of other exempt assets."

The next category, discloseable assets, is defined in Section V(B) as assets which are both unlikely to give rise to a conflict of interest and fall within a list of various types of assets. Section V(B)(1) describes one type of discloseable asset relevant to this Inquiry:

> ownership interests in family businesses, and in companies whose stocks and shares are not traded publicly, which do not contract with the government, which are of a local character, and which do not own or control shares of public companies[.]

Ministers may publicly disclose these assets, failing which the rules for the treatment of the next category, controlled assets, apply.

Controlled assets are assets that are neither exempt nor discloseable. They must be divested, either by arm's length sale or by transfer to a trust, such as a blind trust. Section V(C) lists a number of examples of controlled assets, two of which are relevant:

> 2) interests in partnerships, proprietorships, joint ventures, private companies and family businesses which are not discloseable assets;
>
> . . . .
>
> 4) self-administered registered retirement savings plans, except those composed exclusively of exempt assets[.]

Because divestment through a blind trust is designed to accomplish the same thing as an outright sale, the guidelines require a blind trust to have certain characteristics. Section V(C)(2) states the key requirements:

> 1) Title to all assets placed in trust must be transferred to the trustee(s);
>
> 2) All trustees of such trusts shall be individuals, corporations or firms that deal with the Minister at arm's length (as this term is defined in the Income Tax Act of Canada). This means that individuals connected with a Minister by blood relationship, marriage or adoption cannot serve as trustees;
>
> . . . .
>
> 4) All decisions of the trustees of a blind trust must be approved by a majority of the trustees, which majority must include the government designated trustee;
>
> . . . .
>
> 6) The terms of each trust instrument shall place on the trustee(s) a clear responsibility not to divulge to, or otherwise inform, directly or indirectly, the Minister of any matter concerning the assets in or the management of the trust, except as hereinafter provided;
>
> 7) The trustee(s) of each trust must be empowered to make all decisions concerning the management of the assets in the trust free of direct or indirect control or influence by the Minister,

> and without informing, consulting with or seeking advice from the Minister;
>
> 8) Each trust instrument shall provide that the trustee(s) must deliver annual statements to the Minister that will permit the preparation of annual income tax returns, or compliance with any other legislation or legal requirements;
>
> 9) Any trust instrument may provide that the Minister be informed of the total value of the trust fund at any time, but such information and the statements referred to . . . above, must not disclose to the Minister the identity, nature, or value of any of the assets in the trust;
>
> . . . .
>
> 11) The Minister may request the trustee(s) to pay to him or her such part of the capital of the trust fund, in cash and not in specie, as he or she may direct[.]

There are additional provisions designed to ensure the independence of the trustee(s) from the minister, as well as requirements that the ADRG review a copy of any trust document before it is signed and receive a copy of the final document.

Avoidance

A third compliance technique is avoidance. For the same reasons that prohibit continued ownership of certain assets, the guidelines require a minister to avoid various activities upon appointment. For example, Section II, Prohibited Activities, requires that ministers must not:

> 1) engage in the practice of a profession or the management or operation of any business or commercial activity, or in the management of assets except exempt or discloseable assets;
> 2) serve as paid consultants;
> 3) retain or accept directorships or offices in commercial corporations, [and in many cases in charitable or philanthropic organizations]. . . .
> 4) serve actively as members in unions or professional associations.

Certain of the statements of principle set out above specify what a minister must avoid. As well, ministers must take steps to avoid conflicts of interest that might arise from serving actively as an executor or trustee.

The Code

The code came into effect on January 1, 1986. It contains requirements that governed Mr. Stevens during his last four weeks in office. As with the guidelines, the code can be divided into general statements dealing with the standards of conduct required of ministers (among others), and particular techniques designed to assist but not to ensure that the standards of conduct are observed. The code, like the guidelines, makes it clear that simply following the techniques it prescribes may not be enough and that ministers are responsible for taking any additional action necessary to prevent real, potential, or apparent conflicts of interest from arising.

The code's general statements about standards of conduct are set out in section 7:

> (a) public office holders shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;
> (b) public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;
> (c) public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate;
> (d) on appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest;
> (e) public office holders shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public office holder;
> (f) public office holders shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person;
> (g) public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public;
> (h) public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities; and
> (i) public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

Although these statements are more detailed, there are no substantial differences, relevant to this Inquiry, between them and the general statements of principle in the guidelines. As with the guidelines, the code sets out a number of steps to be taken by ministers. These procedures are virtually identical to those in the guidelines.

Disclosure

First, a minister is required to make a confidential report of all assets that are not exempt, of all direct and contingent liabilities, and of all outside activities, including those during the two-year period before he or she became a minister, as well as of philanthropic, charitable, and non-commercial activities, and involvements as trustee, executor, or under power of attorney.

Then, as in the guidelines, a minister is required to take one or more additional steps. If a minister has any significant non-exempt assets, he or she must make either a public declaration of them in a formal written statement or divest them. If he or she has reported any activities in the confidential report, a public declaration of certain of these must be made, just as is the case in the guidelines. In addition, the code requires a public declaration of all gifts, hospitality, or other benefits with a value of $200 or more.

Divestment

Divestment is usually effected either by arm's length sale of the assets or by placing them in a trust. Assets are also classified, as in the guidelines, to determine whether disclosure or divestment is needed. Generally, exempt assets are assets and interests for a minister's or his or her family's private use or of a non-commercial character; the code sets out a number of examples in section 19, such as "registered retirement savings plans that are not self-administered." No public declaration or divestment need be made of exempt assets. There need be no confidential report either.

Declarable assets are effectively defined as those that are neither exempt nor "controlled." The code gives illustrations of declarable assets in section 25, one of which is relevant to this Inquiry:

> (a) interests in family businesses and in companies that are of a local character, do not contract with the government, and do not own or control shares of public companies, other than incidentally, and whose stocks and shares are not traded publicly[.]

Making a public disclosure of declarable assets and continuing to deal with them is permitted by the code so long as a minister ensures that his or her dealings cannot give rise to a conflict of interest.

Controlled assets are assets whose value could be directly or indirectly affected by government decisions or policy. Relevant types of controlled assets set out in section 26 are:

> (a) publicly traded securities of corporations and foreign governments;
> (b) self-administered Registered Retirement Savings Plans, except when exclusively composed of exempt assets. . . .

Controlled assets, except for those determined by the ADRG to be of such minimal value that they do not constitute any risk of conflict of interest, are to be divested; the ADRG can approve exceptions to this rule if the controlled assets in question are pledged to a lending institution as collateral, of such value as to be practically non-marketable, or lost or not available for disposition by the minister.

The code notes that controlled assets are usually divested by an arm's length sale or by putting them in a trust, the most common of which are set out in a schedule to the code. Such trusts must not leave in the minister's hands any power of management or decision over the assets placed in trust.

The appropriate trust arrangement may depend on the nature of the asset to be divested. The schedule mentions three common types of trusts (blind, frozen, and retention). The first two are relevant and are defined as follows:

> (a) ... A blind trust is one in which the trustee makes all investment decisions concerning the management of the trust assets with no direction from or control by the public office holder who has placed the assets in trust.
>
> No information is provided to the public office holder (settlor) except information that is required by law to be filed. A public office holder who establishes a blind trust may receive any income earned by the trust, add or withdraw capital funds, and be informed of the aggregate value of the entrusted assets.
>
> (b) ... A frozen trust is one in which the trustee maintains the holdings essentially as they were when the trust was established. Public office holders who establish a frozen trust are entitled to any income earned by the trust.
>
> Assets requiring active decision making by the trustee (such as convertible securities and real estate) or assets easily affected by Government action are not considered suitable for a frozen trust.

The schedule also contains certain general requirements for all trusts to be used in effecting divestiture, which are similar to those in the guidelines regarding blind trusts. The relevant requirements are as follows:

> (a) ... The assets to be placed in trust must vest in the trustee.
>
> (b) ... The public office holder (settlor) may not have any power of management or control over trust assets. The trustee, likewise, may not seek or accept any instruction or advice from the public office holder concerning the management or the administration of the assets.
>
> ....
>
> (d) ... The term of any trust is to be for as long as the public office holder who establishes the trust continues to hold an office that makes that method of divestment appropriate. A trust may be dismantled once the trust assets have been depleted.

. . . .

3. Care must be exercised in selecting trustees for each type of trust arrangements. If a single trustee, other than the ADRG, is appointed, the trustee should be:

(a) a public trustee;

(b) a company, such as a trust company or investment company, that is public and known to be qualified in performing the duties of a trustee; or

(c) an individual who performs trustee duties in the normal course of his or her work.

4. If a single trustee is appointed he or she shall clearly be at arm's length from the public office holder.

5. If more than one trustee is selected, at least one of them shall be a public trustee or a company at arm's length from the public office holder.

Just as in the guidelines, the minister must supply the ADRG with a copy of the trust document for his or her confidential files. The code also provides for possible reimbursement of costs incurred in setting up such trusts.

Avoidance

The code also includes avoidance requirements; as in the guidelines, a minister must avoid or withdraw from certain activities or situations. For example, section 29 requires that, except in certain restricted circumstances, ministers must not:

> outside their official duties,
> (a) engage in the practice of a profession;
> (b) actively manage or operate a business or commercial activity;
> (c) retain or accept directorships or offices in a financial or commercial corporation;
> (d) hold office in a union or professional association; or
> (e) serve as a paid consultant.

They must also avoid giving preferential treatment to family, friends, or organizations to which they belong, and being or appearing to be placed under an obligation to anyone who might profit from special consideration by them.

Compliance Techniques

The code, in addition to setting out the procedures and techniques described above, also explicitly defines each of them. These definitions, which are contained in section 16, are as follows:

> (a) Avoidance . . . is the avoidance of, or withdrawal from participation in, activities or situations that place public office holders in a real, potential or apparent conflict of interest relative to their official duties and responsibilities;

(b) Confidential Report . . . is a written statement by a public office holder to a designated official of ownership of an asset, receipt of a gift, hospitality, or other benefit, or participation in any outside employment or activity. The designated official shall keep the statement confidential. Where a public office holder is subject to continuing direction in the performance of his or her official duties and responsibilities, a Confidential Report will, usually, be considered as compliance with the conflict of interest measures set out in this Part. In cases where a Confidential Report does not constitute such compliance, a Confidential Report is preliminary to a Public Declaration, resignation from activity or Divestment;

(c) Public Declaration . . . is a written public statement by a public office holder of ownership of an asset, receipt of a gift, hospitality or other benefit, or participation in any outside employment or activity, where such ownership, receipt or participation could give rise to a conflict of interest or otherwise impair the ability of the public office holder to perform his or her official duties and responsibilities objectively; and

(d) Divestment . . . is the sale at arm's length, or the placement in trust, of assets, where continued ownership by the public office holder would constitute a real or potential conflict of interest with the public office holder's official duties and responsibilities. The requirement to divest of such assets shall be determined in relation to the duties and responsibilities of the public office holder. For example, the more comprehensive the duties and responsibilities of the public office holder, the more extensive the Divestment needed and, conversely, the narrower the specialization of the duties and responsibilities of the public office holder, the narrower the extent of the Divestment needed.

In cases of disagreement or doubt as to the appropriate technique, the ADRG is to determine what is appropriate, taking into account the minister's specific responsibilities, the value and type of the assets and interests involved, and the costs of divestment versus the potential for conflict of interest, while trying to reach agreement with the minister.

Division of Responsibility among the ADRG, the Prime Minister, and the Minister

The ADRG has a mandate to assist ministers in observing the principles set out in the guidelines and code through advice, consultation, and education, and to administer the guidelines and the provisions of the code dealing with ministers. In the course of assisting a minister, the ADRG forms an opinion about the minister's compliance with the guidelines or code. When satisfied, the ADRG will recommend that the prime minister approve the measures taken by the minister. This advisory role involves helping ministers to make their disclosures and to arrange their affairs generally in accord with the guidelines or code. For example, under the code the ADRG is required to keep copies of trust documents for reference by ministers.

Although the ADRG does obtain background material on ministers during the compliance process, and the officials of that office must and do offer advice on fairly sensitive matters and exercise considerable judgment, the office of the ADRG is not constituted as an independent policing and investigative authority. Responsibility for compliance with the guidelines and code remains with ministers, while responsibility for promulgation of standards of conduct, and approval of compliance measures, rests with the prime minister as first minister.

Certain provisions of the guidelines and code recognize this line of authority. For example, under the guidelines a minister is required to report his or her assets and liabilities to the prime minister through the ADRG. Under both the guidelines and the code, issues that a minister and the ADRG cannot settle are ultimately referred to the prime minister. Under the code, the prime minister has the authority to take appropriate measures, including discharge or termination of appointment, where a minister has failed to comply with its provisions.

I also note that, at pages 64 and 65 of the submission of the Government of Canada, reference is made to Prime Minister Mulroney's letter of September 9, 1985, to members of Parliament and senators on the subject of the code. The prime minister's letter too makes it clear that responsibility for promulgating ethical standards governing ministers lies with the prime minister and cabinet, and ultimately with Parliament. The ADRG's office, he wrote, was not to be a "quasi-independent [office] ... that will allow the Government to shirk its responsibility." Nothing in the code would relieve him and his colleagues of the need to exercise judgment, he wrote, nor would rules or regulations be allowed to be a substitute for this need. The letter also reiterates that "the Code continues to place the onus of responsibility on the individual public office holder for his or her own conduct." This responsibility is clear from the guidelines and code themselves, and is stated in both explicitly.

Spouses

The guidelines and code apply only to public office holders — not their spouses. Neither the guidelines nor the code directs a spouse of a public office holder to alter, let alone cease, the practice of a profession or a business activity. In fact, no restraint of any kind is placed on a spouse's activities or dealings with property. These provisions, responding to the social fact that spouses have independent careers, reflect a policy decision that the restraints imposed on a public office holder should not extend to his or her spouse.

The absence of any restraint on spouses under the guidelines or code, when coupled with considerations of the marital relationship, gives rise to legitimate concerns that a spouse's activities may well bring a minister into a position of conflict. This of course was the reason for certain statements made in both Prime Minister Trudeau's letter of April 28, 1980, and Prime Minister Mulroney's letter of September 9, 1985, which in substance direct that a minister has an individual responsibility to prevent conflicts of interest, including those that might conceivably arise out of the activities of a spouse or the dealing in property or investments, owned or managed in whole or in part, by a spouse.

Under this direction a minister has a duty to ensure, one, that a spouse's activities do not create a conflict for the minister and, two, that a spouse is not used as a vehicle to circumvent restrictions on the minister's behaviour. Thus the obligation to avoid real or apparent conflict rests squarely with the minister. Whether or not there is a general social expectation that a minister will rely on his or her spouse to abstain from activities that could give rise to conflicts of interest, there is no duty or obligation on the spouse to do so.

This duty, which is by its nature continuing, requires that a minister remain sufficiently aware of a spouse's activities to take whatever action is necessary to avoid real or apparent conflicts. Some of the more obvious questions a minister might have to consider in carrying out the duty are as follows:

- What is the nature of my duties as a minister? What kinds of contacts do I have? What kinds of decisions do I make?
- Is there anything in the activity of my spouse that could conceivably give rise to a conflict of interest *on my part*? Is any difficulty created when the professional or business activities of my spouse relate directly to the assets placed in the blind trust? Will the professional or business activities of my spouse bring her or him into contact with any of the same institutions or people with whom I will be dealing as minister?
- Is there anything in our family's current situation, financial or otherwise, that suggests such approaches or contacts on the part of my spouse in the foreseeable future? If so, what should be done about that situation? How do I best fulfil the obligation that I have as minister to prevent conflicts of interests that could conceivably arise out of the activities of my spouse?

If the answers to these questions raise issues of conflict of interest and no mutually satisfactory arrangement is reached between the spouses as to who will abstain from certain activities, I do not resile from the proposition that it is the minister and not the spouse who will be obliged not to act, when to act would bring the minister into a position of conflict. Although onerous, such an obligation is consonant with the high standard of ethics required of public office holders.

This is my understanding of the application and operation of the relevant conflict of interest regimes as they pertained to Mr. Stevens. I now turn to the definition of conflict of interest.

Chapter 3

The Definition of Conflict of Interest

The terms of reference ask me to inquire and report on whether the Honourable Sinclair M. Stevens was in real or apparent conflict of interest "as defined by the Conflict of Interest and Post Employment Code for Public Office Holders and the letter from the Prime Minister to the Honourable Sinclair M. Stevens of September 9, 1985." However, neither the code nor the letter referred to defines real or apparent conflict of interest, nor do the guidelines formerly applicable to ministers. Because much will depend on how conflict of interest is defined, it is important that I ensure that there is no doubt about my interpretation of the language of the guidelines, code, and letter, or about the definition that I will be employing throughout the balance of this report. Given the absence of an explicit definition for me to rely on, I must have recourse to the more traditional sources of interpretation such as the common law and our common understanding of what conflict of interest means.

I am grateful to counsel for their oral and written submissions on this important question of definition. Although differing in their approaches, they provided useful analyses of the relevant case-law and the leading textual authorities on the meaning of real and apparent conflict of interest.

Real Conflict of Interest

All counsel agreed that at least three prerequisites have to be established before a public office holder can be said to be in a position of real conflict of interest. They are:

1. the existence of a private interest;
2. that is known to the public office holder; and
3. that has a connection or nexus with his or her public duties or responsibilities that is sufficient to influence the exercise of those duties or responsibilities.

There was also agreement that conflict of interest does not require conflicting interests in the literal sense, that is, a divergence between the public office holder's private interests on the one hand and his or her public duties or responsibilities on the other. It is clear that a conflict of interest can exist even where private interests and public duties coincide. This point was made in the 1984 *Report of the Task Force on Conflict of Interest* (Starr-Sharp Report):

> Private and public interests need not be in competition or conflict for an ethical problem to exist; the public interest could be abused equally where the private interests of the office holder coincide with the public interest so as to mesh together, with the result that in serving the public purpose the individual benefits privately as well. . . . Conflict of interest can in some cases mean compatibility of interest. (p. 29)

The disagreement among counsel was over whether there had to be a fourth prerequisite: that the exercise of the public office holder's duties or responsibilities must have reached the stage of actual decision making.

Commission counsel submitted that the addition of this fourth prerequisite — the need for an actual decision — was too narrow a focus for conflict of interest. In the submission of Commission counsel, the "exercise of duties and responsibilities of government," whether by a minister or any other public office holder, includes more than just the moment of actual decision. The duties and responsibilities of a minister may involve numerous ways in which his or her official functions are exercised — ranging, for example, from informal telephone conversations and meetings to more substantial discussions of government business and more formal ministerial decisions or rulings. In the submission of Commission counsel, the appropriate focus for a definition of conflict of interest is the discharging of public duties or responsibilities, not just the making of a decision that confers a benefit. The focus then is on the situation, not the decision. Making a decision can be an aspect of the situation, but it need not be. In Commission counsel's submission, public office holders may have telephone conversations or attend meetings where public matters are discussed and where no actual decision is made, and still be in a position of conflict.

Counsel for Mr. Stevens and for the Government of Canada disagreed with this approach. They urged me to restrict real conflict of interest to those cases where a minister had actually made a decision that conferred a benefit. According to this definition, a minister of the Crown who met with a party that was clearly seeking government work from the minister, and who discussed with that party a private proposal that would further the minister's personal interests, would not be in a position of conflict unless he or she actually decided to award government work to that party.

I find this latter submission and the suggested definition of conflict of interest much too narrow. In my view, the narrowing of the focus to the moment of actual decision does not accord with the purpose of the code or indeed with the objectives underlying a modern ethics-in-government regime. As Commission counsel quite properly noted, if the need to show an actual decision conferring a benefit is to be required as part of the test for conflict of interest, the test would be narrowed down to what is already proscribed by our criminal law. Provisions in our Criminal Code already deal with decision-making activities of public office holders that in some circumstances may amount to a fraud upon the government or a breach of the public trust (see, for example, sections 110 and 111 of the Criminal Code in Appendix J).

It is important not to blur the demands of the criminal law with the requirements of a conflict of interest code. The former consists of carefully legislated provisions with attendant penal consequences for actions that fall below the line of what is socially acceptable. The object of the criminal provisions is to ensure that, at a minimum, public office holders will not engage in fraudulent, corrupt, or otherwise criminal behaviour. The provisions of the conflict of interest code are of a different character. First, the provisions are guidelines at most. No legal consequences flow from their violation. The sanctions, if any, are political rather than legal. Their overall objective is to *enhance* public confidence in the integrity of government. The point was effectively made by Commission counsel as follows: "It is not enough . . . to show that you are not a crook. . . . More, surely, is expected of public office holders. . . . [T]hat is why the enhancement of public confidence is at the root of the conflict of interest guidelines" (Transcript, vol. 83, pp. 13,856–57).

Further, the guidelines and the code that I must interpret and apply themselves demand more of public office holders than mere compliance with the criminal law of Canada. For example, section 7(a) of the code requires public office holders to "perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and *enhanced*." Section 7(b) states that "public office holders have an obligation to act in a manner that will bear *the closest public scrutiny*, an obligation that is not fully discharged by simply acting within the law." Section 5(2) makes it clear that "[c]onforming to this Code *does not absolve* individual public office holders of the responsibility to take such *additional action* as may be necessary to prevent real, potential or apparent conflicts of interest" (emphasis added).

Moreover, nowhere do the provisions of the code limit their application to situations where a public duty is actually being exercised or a decision is actually being made. Rather, the provisions speak about "situations," "positions," and "activities" and the obligation on the part of the public office holder to avoid activities or situations that place him or her in real, potential, or apparent conflicts of interest relative to his or her official duties and responsibilities; see, for example, sections 4(d), 5(2), 7(a), 7(b), 7(c), 7(d), 16(a), 36(2), and the letter of September 9, 1985.

The purpose for which conflict of interest rules are designed — that is, to ensure that a public office holder exercises his or her official duties and responsibilities "in a manner that will bear the closest public scrutiny" so that "public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced" (section 7) — would be defeated if the focus of inquiry were artificially confined to cases of actual decision.

The duties and responsibilities of public office, and particularly those of a minister, are sophisticated and subtle. Immense power and influence can be wielded even in the absence of actual decision. The nature of modern government — the importance of access, the nature of influence, the structure of governmental decision making — is such that public confidence and trust in the integrity, objectivity, and impartiality of government can only be conserved and enhanced if *all* of the duties and responsibilities of the public office holder are properly subject to scrutiny, not just those that involve actual decisions. The mingling of private interests with those public duties or responsibilities is no more acceptable at the meeting and discussion stage than it is at the decision-making stage.

I am thus satisfied that the proper interpretation of conflict of interest is one that is concerned with any situation in which the public office holder is exercising or discharging any duty or responsibility of public office, not just that of decision making. This interpretation is also supported in the academic literature on conflict of interest, and in particular in the writings of Professors Sandra Williams and Kenneth Kernaghan. Conflict of interest is defined as "a situation" in which an official or a public office holder has a private financial interest that is "sufficient to influence, or appear to influence, the exercise of his public duties and responsibilities" (Williams, *Conflict of Interest: Ethical Dilemma*, p. 6; see also Kernaghan, "Code of Ethics," p. 253).

Indeed, this is the very definition that was set out by the Privy Council in 1973. The *Green Paper on Members of Parliament and Conflict of Interest* defined conflict of interest as a "situation in which a Member of Parliament has a personal or private pecuniary interest sufficient to influence, or appear to influence, the exercise of his public duties and responsibilities" (p. 1).

The emphasis is on the situation. The focus of the Inquiry is not confined to the making of a decision but to the full exercise of an office holder's public duties and responsibilities. It should be noted that the test is objective; it is not "did the private pecuniary interest *in fact* influence the exercise of the particular duty or responsibility," but "was the private pecuniary interest *sufficient* to influence the exercise of the public duty or responsibility."

It should also be noted that a real conflict does not materialize until the public office holder is in a situation in which he or she is exercising a duty or responsibility of public office. This is not to say that positive action, such as a telephone call, the attendance at a meeting, or the discussion of some issue, is always required; there may be circumstances where failure to act or a conscious refusal to intervene may amount to de facto approval or endorsement. In these cases the situation may be live with conflict even though the "exercise" of a public duty or responsibility amounts to nothing more than conscious inaction.

Again, the key to understanding the Green Paper's definition of conflict of interest is to understand that the focus is on the situation, not the decision, and that the framework for scrutiny is *any* exercise by the public office holder of his or her official duties or responsibilities.

I am satisfied that the definition set out in the 1973 Green Paper is an appropriate and reasonable interpretation of what constitutes a real conflict of interest. It not only accords with the leading authorities but also with a common sense understanding of what we mean when we say that someone is in a position of conflict of interest. I am reassured to note that Commission counsel referred to the 1973 Green Paper definition throughout the course of the hearings and indicated to all concerned that this was indeed the standard they were using.

It should be noted, however, that the Green Paper connects real and apparent conflict of interest under one definition. In my view, it is important to treat the two notions separately. I will deal with "apparent" conflict in some detail below. Here I want to set out the definition that I will be using for real conflict of interest.

In my view, the 1973 Green Paper definition can be paraphrased for the purposes of this Inquiry as follows: a *real* conflict of interest denotes "a situation in which a minister of the Crown has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities." This is the definition of real conflict of interest that I will employ throughout the balance of this report.

Before turning to apparent conflict of interest, one final matter has to be addressed. If real conflict is a situation in which a public office holder has a private economic interest that could influence the exercise of a public duty or responsibility, what then is potential conflict? The code refers to "real, potential and apparent" conflicts of interest in its provisions. The analysis developed above, in my view, helps clarify the notion of potential conflict of interest. Where the public office holder finds himself or herself in a situation in which the existence of some private economic interest could influence the exercise of his or her public duties or responsibilities, the public office holder is in a potential conflict of interest provided that he or she has not yet exercised such duty or responsibility. As soon as the telephone call is placed, or the meeting convened, or the question answered, or the letter drafted, a duty or responsibility of public office has been exercised and the line between potential and real has been crossed.

Potential conflict is the situation that arises between the moment the public office holder realizes that he or she has a private economic interest in some matter at hand and the moment the public office holder exercises a public duty or responsibility and places himself or herself in a position of real conflict of interest. Potential conflict is that momentary oasis of sober reflection that allows the public office holder an opportunity to respond to and resolve the problem presented in a manner that enhances public confidence in the integrity of government.

The key to understanding potential conflict is in the notion of foreseeability. The potential for conflict exists as soon as the public office holder can foresee that he or she has a private economic interest that may be sufficient to influence a public duty or responsibility. As soon as a real conflict of interest is foreseeable, the public office holder must take all appropriate steps to extricate himself or herself from the predicament. If the caution signs are ignored and the public office holder proceeds to discharge any duty or responsibility of the particular public office that could affect or be affected by the private interest, the line is crossed and a situation of real conflict ensues.

The link between potential conflict and the notion of foreseeability is evident from a review of the provisions of both the 1985 code and the 1980 guidelines. Indeed, although the code speaks in terms of "real, potential or apparent" conflicts of interest, the guidelines are more direct and refer to "real, apparent or foreseeable" conflicts.

A situation of potential conflict should not of itself attract criticism or condemnation and indeed is not criticized in the code. Rather, the code urges the public office holder to reflect upon his or her circumstances and take appropriate steps to prevent the situation from developing into one of a real conflict. Modern conflict of interest inquiries such as this one are thus not concerned with identifying instances of potential conflict — after all, for most public office holders these instances should be nothing more than occasions for reflection and resolution. It is therefore not surprising that in my own terms of reference the Privy Council has not directed that I inquire into instances of "potential" conflict but rather that I inquire into and report on "whether the Honourable Sinclair M. Stevens was in real or apparent conflict of interest."

Apparent Conflict of Interest

Although apparent conflict of interest is not explicitly defined in the guidelines, code, or letter, many provisions of the code make clear that there is a concern about appearances.

Section 7(d) of the code requires public office holders to arrange their private affairs "in a manner that will prevent real, potential or apparent conflicts of interest from arising." Section 16(a) suggests as one method of compliance the technique of "avoidance," which is defined as the avoidance of or withdrawal from participation in "activities or situations that place public office holders in a real, potential or apparent conflict of interest relative to their official duties and responsibilities." Section 36(2) counsels public office holders to "take care to avoid being placed or the appearance of being placed under an obligation to any person or organization that might profit from special consideration on the part of the office holder."

Here again no sanctions or legal consequences flow from a finding of apparent conflict. Public office holders are simply urged to "act in a manner that will bear the closest public scrutiny" (section 7(b)) and to "arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising" (section 7(d)).

The concern about appearance of conflict as an important ethical postulate of modern government is one that is well founded. The reasons are obvious. Trust and confidence in government can be maintained and enhanced only if the occasions for apparent conflict are kept to a minimum. Public perception is important. Indeed, the perception that government business is being conducted in an impartial and even-handed manner goes a long way to enhancing public confidence in the overall integrity of government.

As Mr. Justice Robins noted in *Re Moll and Fisher* (1979), 23 O.R. (2d) 609, a case involving municipal school trustees, at page 621:

> Clearly, it is inimical to the public interest that an elected official having a voice in bargaining on behalf of the public should, at the same time, be in a position to advance his private economic interest. . . . Trustees, like Caesar's wife, must be, and appear to be, beyond temptation and reproach. The law sets a high objective standard of conduct.

The code is not law as such. The code contains guidelines for ethical conduct. And it strives to set a "high objective standard of conduct" for public office holders. But what is that standard? Apparent conflict of interest is not defined. Further, recourse to the common law is not as helpful as it was for real conflict. Given that legal consequences rarely flow from findings of mere appearance of conflict, few cases are litigated or reported. One exception is the decision of the Federal Court of Appeal in *Threader and Spinks v. The Queen* (1986), 68 N.R. 143. However, the specific prerequisites set out there for appearance of conflict are not directly relevant because of the peculiar regulatory context and because of the court's concern to deal with the serious job-related consequences that were at stake.

Some assistance from the common law, however, can be found in what is known in the judicial context as "reasonable apprehension of bias." The principle that justice must not only be done, but must also be seen to be done, a principle commonly associated with the 1924 decision in the *Sussex Justices Case*, [1924] 1 K.B. 256, is as ancient as the law itself. As Chancellor Boyd noted in *Re L'Abbé and Blind River* (1904), 7 O.L.R. 230 at page 231:

> "The plain principle of justice, that no one can be a judge in his own cause, pervades every branch of the law, and is as ancient as the law itself": Paley on Summary Convictions, 7th ed., p. 43, thus sums up the old law. And in *Allinson v. General Council of Medical Education and Registration*, [1894] 1 Q.B. 750, we have the modern exposition: "In the administration of justice, whether by a

> recognized legal Court, or by persons who, although not a legal public Court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased": Lord Esher, M.R., at p. 758.

Chancellor Boyd went on to observe at page 231 that "[t]his fundamental rule in the administration of the law is equally venerable and pervasive in the consuetudinary practice of parliaments and legislative bodies."

Relying on the analogy with reasonable apprehension of bias and the common understanding of the phrase "appearance of conflict," Commission counsel suggests the following definition: "An appearance of conflict exists when there is a reasonable apprehension, which a reasonably well-informed person could properly have, that a conflict of interest exists."

An appearance of conflict could thus exist even where there is no real conflict in fact. Real conflict requires, inter alia, knowledge on the part of the public office holder of the private interest that could be affected by his or her actions or inactions. No such actual knowledge is necessary for an apparent conflict because appearance depends on perception. However, the perception must be reasonable, fair, and objective. An appearance of conflict should not be found unless a reasonably well-informed person could reasonably conclude as a result of the surrounding circumstances that the public official must have known about his or her private interest.

It was also emphasized that although appearance of conflict requires that the perception be fair-minded and reasonably well informed, it does not require that the perception be based on a complete understanding of *all* the facts, including the public office holder's actual knowledge.

It is on this point that Commission counsel on the one hand and counsel for Mr. Stevens and for the Government of Canada on the other part company. The latter would add a further requirement for appearance of conflict: that the reasonably well-informed observer establish in fact that the minister had actual knowledge of or was at least wilfully blind to the existence of his private interests.

Both counsel for Mr. Stevens and for the Government of Canada argued that actual knowledge is thus required not only for a finding of real conflict of interest but also for a finding of appearance of conflict. The submission amounted to the assertion that "knowledge," or "mens rea" in the criminal law sense, was a necessary prerequisite to appearance of conflict.

I have difficulty with this submission. The concern that actual knowledge or mens rea be a prerequisite to a finding of appearance of conflict seems to be rooted in a fundamental misunderstanding of "appearance of conflict" and a misreading of the provisions of the code. The submission of counsel for Mr. Stevens and for the Government of Canada in my view proceeds from the erroneous assumption that the code is designed to punish wrong-doers. Indeed, this adoption of criminal law analysis was evident in the submission of counsel for the Government of Canada at page 11 that "the code is not a device to punish the innocent."

But this, in my view, characterizes the nature and purpose of the conflict of interest code incorrectly. As noted earlier, the code and particularly the provisions dealing with appearance of conflict are not penal in nature. The consequences for breaching these standards of ethical behaviour are moral and political, not legal and certainly not penal. The object and purpose of the code is to enhance the impartiality and integrity of public office holders. The prevention of apparent conflict is one way in which this objective is achieved.

I do not believe it is appropriate to impose by analogy or otherwise the requirements of criminal law upon conflict of interest guidelines. Indeed, I note that the criminal law itself has carved out an exception to the doctrine of mens rea in the area of breach of trust by public office holders. In *R. v. Campbell*, [1967] 3 C.C.C. 250, the Ontario Court of Appeal found that even under a Criminal Code prosecution for breach of public trust, full mens rea or wilful blindness was not required, and that in certain circumstances ordinary negligence was sufficient to establish the criminal offence. If knowledge or intention is not required in related prosecutions under the criminal law, it surely cannot be a prerequisite for the application of conflict of interest guidelines.

Counsel for Mr. Stevens and for the Government of Canada also submitted that the onus is upon the reasonably well-informed observer to ascertain *all* the facts, including the office holder's state of knowledge, before coming to any conclusion about appearance of conflict. Counsel for the Government of Canada put the point this way: If I should find after five months of public hearings and listening to the evidence of more than 90 witnesses that in a particular situation Mr. Stevens in fact had no knowledge of his private interest, then I should not find an appearance of conflict. That is, if I have now found the "true" situation, and if I have satisfied myself that in this situation the minister did not in fact know about a particular private interest, then there can be no finding of appearance of conflict with regard to that situation.

This is, to say the least, a remarkable submission. It really amounts to the suggestion that the reasonably well-informed Canadian must conduct his or her own commission of inquiry before he or she can draw any conclusions about appearance of conflict.

In support of this submission, counsel for Mr. Stevens and for the federal government rely on the Supreme Court decision in *Valente v. The Queen*, [1985] 2 S.C.R. 673. In their view, the Court adopted the "true situation" test as part of the requirements for finding appearance of conflict, or, more accurately in the judicial context, reasonable apprehension of bias. Counsel for both Mr. Stevens and the Government of Canada submit that in *Valente* the Supreme Court of Canada adopted the dissenting opinion of Mr. Justice de Grandpré in *Commit-*

tee for Justice and Liberty et al. v. National Energy Board et al., [1978] 1 S.C.R. 369. In this decision the majority of the Supreme Court of Canada, per Laskin C.J.C., defined reasonable apprehension of bias at page 391 as "a reasonable apprehension, which reasonably well-informed persons could properly have."

Mr. Justice de Grandpré dissented, however, and set out his test in two ways. First, at page 394 he said:

> [T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude."

Later, at page 402, Mr. Justice de Grandpré put the question somewhat differently:

> [W]hat would a reasonable and right minded person have discovered if he had taken the time and trouble of informing himself of the true situation?

It is interesting to note that Commission counsel accepts the first branch of Mr. Justice de Grandpré's test as a paraphrase of the conventional definition that they urge me to adopt. Commission counsel takes exception, however, to the second branch and the additional requirement that the reasonably well-informed person must also take the time and trouble to inform himself or herself of *all* the facts, that is, of the "true situation."

Commission counsel submits that the second branch of Mr. Justice de Grandpré's test was not in fact adopted in the Supreme Court's decision in *Valente*. I agree. A careful reading of Mr. Justice LeDain's decision in *Valente* shows that only the first portion of Mr. Justice de Grandpré's language was in fact approved, that is, "what would an informed person, viewing the matter realistically and practically, and having thought the matter through, conclude."

The second part of Mr. Justice de Grandpré's test — taking the time and trouble to inform oneself of the true situation — was not adopted or approved by the Supreme Court. And for good reason. The onus is surely not upon the fair-minded and reasonably informed Canadian citizen to conduct his or her own commission of inquiry in order to determine whether or not certain facts were indeed known to the minister. The onus in modern ethics-in-government regimes and, in particular, in the provisions of the code, is upon the public office holder to act "in a manner that will bear the closest public scrutiny" (section 7(b)) and to arrange his or her own affairs "in a manner that will prevent real, potential or apparent conflicts of interest from arising" (section 7(d)).

It is enough that an informed person viewing the matter realistically and practically and having thought the matter through concludes that there is an appearance of conflict. That is what appearance means. I am satisfied that the appropriate definition is that set out by the Supreme Court of Canada in *Valente* as quoted above, or as paraphrased for the purposes of this Inquiry as follows: "An apparent conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists."

Definitions

- A real conflict of interest denotes a situation in which a minister of the Crown has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities.
- An apparent conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists.

These are the definitions of real and apparent conflict that in my view accord with the common law, and with the provisions of the guidelines and code. These are the definitions that I will be using in this report.

Part Two

Business Interests

In this part I briefly describe Mr. Stevens' background and ministerial responsibilities and then set out the nature and extent of Mr. Stevens' private business interests, their financial condition, and his involvement in these business interests to September 1984 when he was appointed to the cabinet. This part concludes with a discussion of the steps that were taken by Mr. Stevens to comply with the guidelines, code, and letter.

Chapter 4

Mr. Stevens' Background and Ministerial Responsibilities

Personal Background

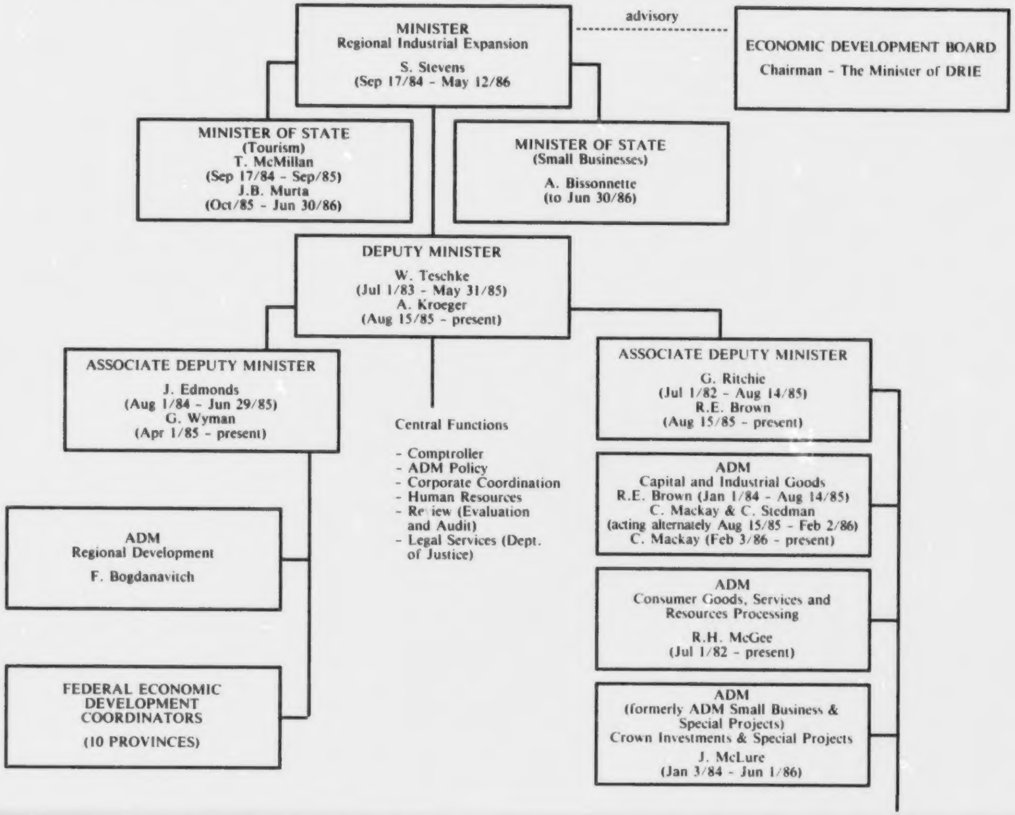
Sinclair M. Stevens graduated from the University of Western Ontario in journalism in 1951 and was employed for two years thereafter as a full-time reporter for the *Toronto Star*. He continued his work as a journalist part-time while he attended Osgoode Hall Law School. In 1955 Mr. Stevens completed his legal studies and joined the Toronto law firm of Fraser and Beatty. In 1957 he established the firm of Stevens, Hassard & Elliott, and practised law until the early 1960s. At this time Mr. Stevens' interests began to turn to business, and he left the practice of law in 1964.

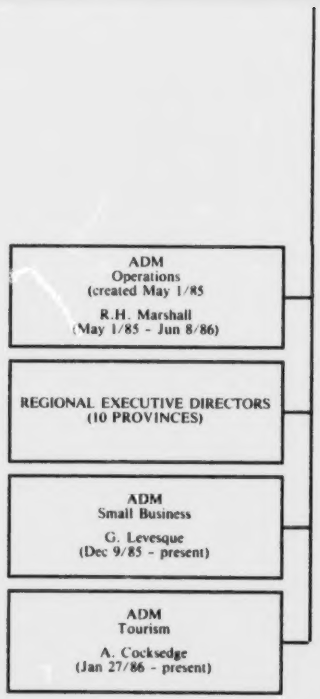
During these early years Mr. Stevens incorporated York Trust & Savings Corporation, which eventually became Metropolitan Trust, now part of National Trust Company. He also incorporated British International Finance (Canada) Limited. Mr. Stevens then worked with James Coyne, a former governor of the Bank of Canada, to obtain a bank charter for the Bank of Western Canada. Together they raised $13 million and eventually obtained the charter, but the bank was never established because of management disagreements. British International Finance was the predecessor corporation to York Centre.

In the late 1960s Mr. Stevens began his involvement in political life by becoming the secretary of the then York-Simcoe Progressive Conservative Association. In 1971 the search committee for that riding asked Mr. Stevens to run for the nomination, and, in February 1972, he was acclaimed by the Progressive Conservative riding association. In every election since, he has been acclaimed and has won the seat.

In 1979 the Progressive Conservative party led by Joe Clark formed the government. Mr. Stevens served for the short time that government was in power as president of the Treasury Board. After the government's defeat, Mr. Stevens continued in Parliament as a member of the opposition and resumed his business activities. On September 4, 1984, the Progressive Conservatives, led by Brian Mulroney, won the general election and again formed the government. On September 17, 1984, Mr. Stevens was appointed minister of DRIE.

Figure 4.1 Department of Regional Industrial Expansion Organization, July 1986


MINISTER
Regional Industrial Expansion
S. Stevens
(Sep 17/84 - May 12/86
advisory
ECONOMIC DEVELOPMENT BOARD
Chairman - The Minister of DRIE
MINISTER OF STATE
(Tourism)
T. McMillan
(Sep 17/84 - Sep/85)
J.B. Murta
(Oct/85 - Jun 30/86)
MINISTER OF STATE
(Small Businesses)
A. Bissonnette
(to Jun 30/86)
DEPUTY MINISTER
W. Teschke
(Jul 1/83 - May 31/85)
A. Kroeger
(Aug 15/85 - present)
ASSOCIATE DEPUTY MINISTER
J. Edmonds
(Aug 1/84 - Jun 29/85)
G. Wyman
(Apr 1/85 - present)
Central Functions
- Comptroller
- ADM Policy
- Corporate Coordination
- Human Resources
- Review (Evaluation and Audit)
- Legal Services (Dept. of Justice)
ASSOCIATE DEPUTY MINISTER
G. Ritchie
(Jul 1/82 - Aug 14/85)
R.E. Brown
(Aug 15/85 - present)
ADM
Regional Development
F. Bogdanavitch
ADM
Capital and Industrial Goods
R.E. Brown (Jan 1/84 - Aug 14/85)
C. Mackay & C. Stedman
(acting alternately Aug 15/85 - Feb 2/86)
C. Mackay (Feb 3/86 - present)
ADM
Consumer Goods, Services and Resources Processing
R.H. McGee
(Jul 1/82 - present)
FEDERAL ECONOMIC DEVELOPMENT COORDINATORS
(10 PROVINCES)
ADM
(formerly ADM Small Business & Special Projects)
Crown Investments & Special Projects
J. McLure
(Jan 3/84 - Jun 1/86)


ADM
Operations
(created May 1/85
R.H. Marshall
(May 1/85 - Jun 8/86)
REGIONAL EXECUTIVE DIRECTORS
(10 PROVINCES)
ADM
Small Business
G. Levesque
(Dec 9/85 - present)
ADM
Tourism
A. Cocksedge
(Jan 27/86 - present)

Source: Exhibit 6, Chart 2

Ministerial Responsibilities

As minister, Mr. Stevens was responsible for the management and direction of DRIE. His vast powers and duties extended generally to manufacturing, processing, and service industries, regional industrial development, small business, tourism, and trade and commerce within Canada. In accordance with this mandate, the minister was to seek ways of enhancing the national economy as well as promoting development in less advantaged areas in Canada. To give effect to these objectives, he was responsible for developing and overseeing various programs, some of which delivered substantial amounts of financial assistance to the private sector. In carrying out his departmental responsibilities Mr. Stevens established and chaired a ministerial committee, called the Economic Development Board (EDB), to review certain major applications for assistance. He was also chairman of another committee in this area, the Cabinet Committee on Economic and Regional Development (CCERD), as well as a member of the Priorities and Planning Committee. The basic organization of the department is shown in figure 4.1.

In addition to DRIE, Mr. Stevens was also responsible for CDIC, Investment Canada, and a number of smaller crown corporations and investments, including the Federal Business Development Bank, Cape Breton Development Corporation, Canadian Patents and Development Ltd., and Pêcheries Canada Inc., and federally owned shares in two fish-packing companies, Fishery Products International Ltd. and National Sea Products Ltd. An overview of these responsibilities is set out in figure 4.2.

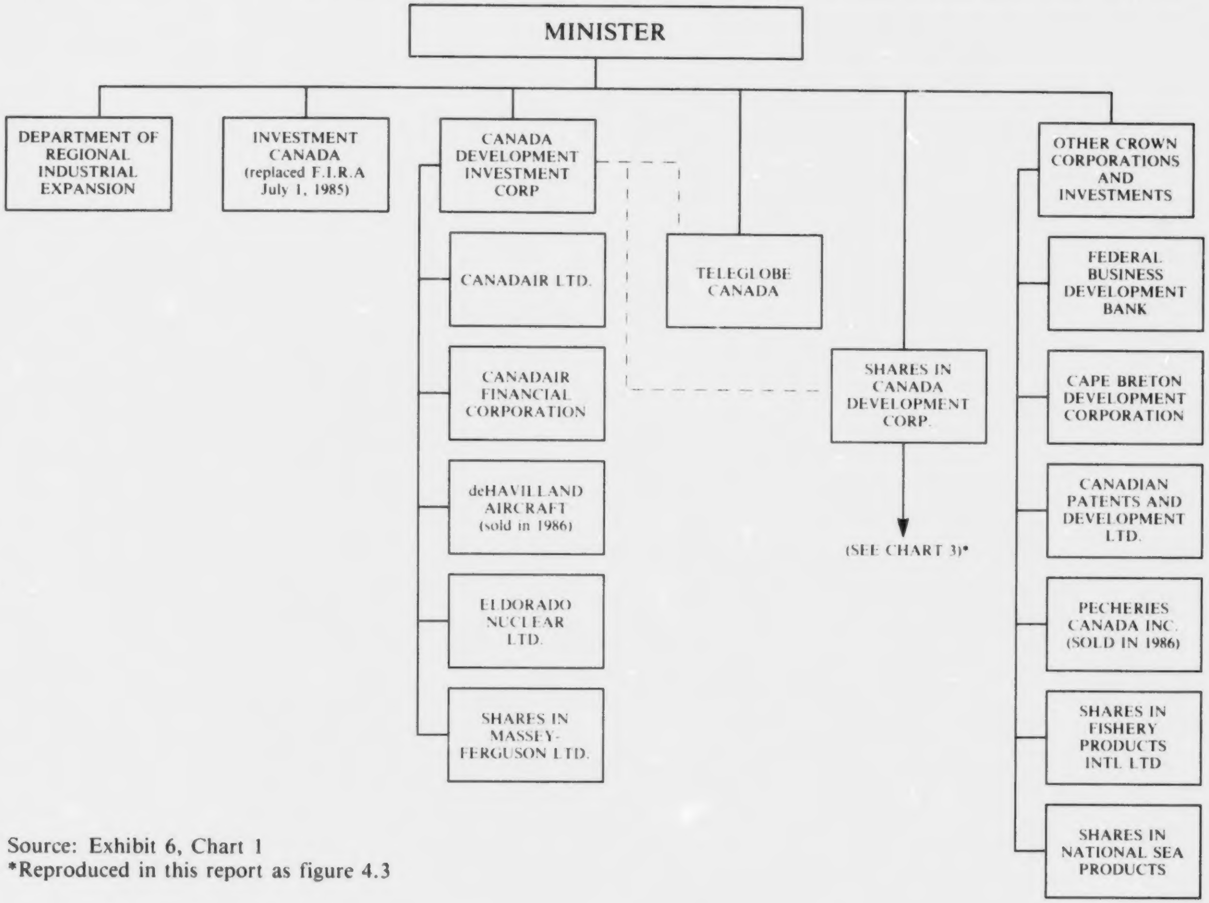
As minister responsible for the Cape Breton Development Corporation, Mr. Stevens was involved in liaison with the Sydney Steel Corporation (Sysco), a Nova Scotia crown corporation with overlapping responsibility for development in the Cape Breton area. Mr. Stevens' duties also included carrying out proposed changes to foreign investment regulation which resulted in the abolition of the Foreign Investment Review Agency (FIRA) and the establishment on July 1, 1985, of its successor, Investment Canada.

Mr. Stevens, as trustee shareholder, had responsibility for CDIC. CDIC, put simply, is a parent crown corporation, holding certain federally owned assets. Mr. Stevens was charged with overseeing government policy in privatization; in the fall of 1984 that policy was to sell to the private sector as quickly as possible the crown corporations owned or managed by CDIC as well as the government's shares in CDC. In doing so, he headed a ministerial committee called the Task Force on Privatization. CDIC's assets changed during Mr. Stevens' tenure as minister as some of its holdings were privatized, but in September 1984 the holdings included Canadair, de Havilland Aircraft of Canada Ltd. (de Havilland), Eldorado Nuclear Ltd. (Eldorado), and the federally owned shares in Massey-Ferguson Ltd. CDIC was responsible for overseeing the operations of Teleglobe Canada

(Teleglobe); it also advised the minister, as trustee shareholder for the government, on the federally owned shares in CDC. The ownership and managerial responsibilities of CDIC are also set out in figure 4.2.

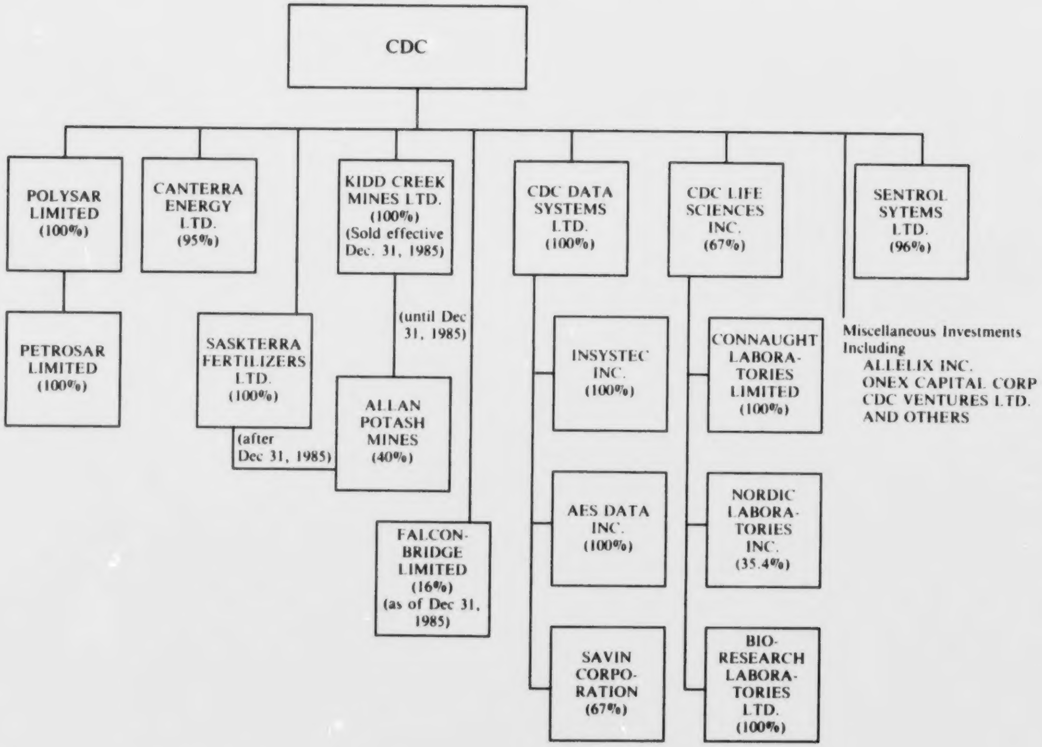
The federal government had approximately a 48 percent voting interest in CDC in the fall of 1984. In turn, CDC's holdings included companies whose activities were wide ranging — Polysar Ltd. and Petrosar Ltd., Canterra Energy Ltd., Kidd Creek Mines Ltd. (Kidd Creek), and CDC Life Sciences Inc., to name but a few. The holdings of CDC as of December 31, 1985, are set out in figure 4.3.

Figure 4.2 Portfolio Responsibilities of the Minister of Regional Industrial Expansion, May 15, 1986


MINISTER
DEPARTMENT OF REGIONAL INDUSTRIAL EXPANSION
INVESTMENT CANADA (replaced F.I.R.A July 1, 1985)
CANADA DEVELOPMENT INVESTMENT CORP
CANADAIR LTD.
CANADAIR FINANCIAL CORPORATION
deHAVILLAND AIRCRAFT (sold in 1986)
ELDORADO NUCLEAR LTD.
SHARES IN MASSEY-FERGUSON LTD.
TELEGLOBE CANADA
SHARES IN CANADA DEVELOPMENT CORP.
(SEE CHART 3)*
OTHER CROWN CORPORATIONS AND INVESTMENTS
FEDERAL BUSINESS DEVELOPMENT BANK
CAPE BRETON DEVELOPMENT CORPORATION
CANADIAN PATENTS AND DEVELOPMENT LTD.
PECHERIES CANADA INC. (SOLD IN 1986)
SHARES IN FISHERY PRODUCTS INTL LTD
SHARES IN NATIONAL SEA PRODUCTS

Source: Exhibit 6, Chart 1
*Reproduced in this report as figure 4.3

Figure 4.3 Canada Development Corporation Holdings, December 31, 1985


CDC
POLYSAR LIMITED (100%)
PETROSAR LIMITED (100%)
CANTERRA ENERGY LTD. (95%)
SASKTERRA FERTILIZERS LTD. (100%)
(after Dec 31, 1985)
KIDD CREEK MINES LTD. (100%) (Sold effective Dec. 31, 1985)
(until Dec 31, 1985)
ALLAN POTASH MINES (40%)
FALCON-BRIDGE LIMITED (16%) (as of Dec 31, 1985)
CDC DATA SYSTEMS LTD. (100%)
INSYSTEC INC. (100%)
AES DATA INC. (100%)
SAVIN CORPO-RATION (67%)
CDC LIFE SCIENCES INC. (67%)
CONNAUGHT LABORA-TORIES LIMITED (100%)
NORDIC LABORA-TORIES INC. (35.4%)
BIO-RESEARCH LABORA-TORIES LTD. (100%)
SENTROL SYTEMS LTD. (96%)
Miscellaneous Investments Including
ALLELIX INC.
ONEX CAPITAL CORP
CDC VENTURES LTD.
AND OTHERS

Source: Exhibit 6, Chart 3

Chapter 5

The York Centre Group of Companies

Mr. Stevens' business interests must be reviewed in detail for a number of reasons. First, the allegations involved dealings with assets and companies alleged to be Mr. Stevens'. The nature of these interests and Mr. Stevens' relationship to them must be understood in order to discuss the issues raised by the allegations and to follow in context the events that form part of them. Secondly, the conflict of interest requirements for cabinet ministers refer to a minister's assets. It is important to know what Mr. Stevens' assets were in order to assess what he was required to do as a minister and whether he did it.

This chapter reviews Mr. Stevens' business assets by describing various companies, the shareholdings in them, their activities, and their key personnel. It outlines the officers and directors in the companies, and describes the companies' financial and administrative interrelationships and the views others had of them. Finally, it deals with the issue of Mr. Stevens' influence and control over them.

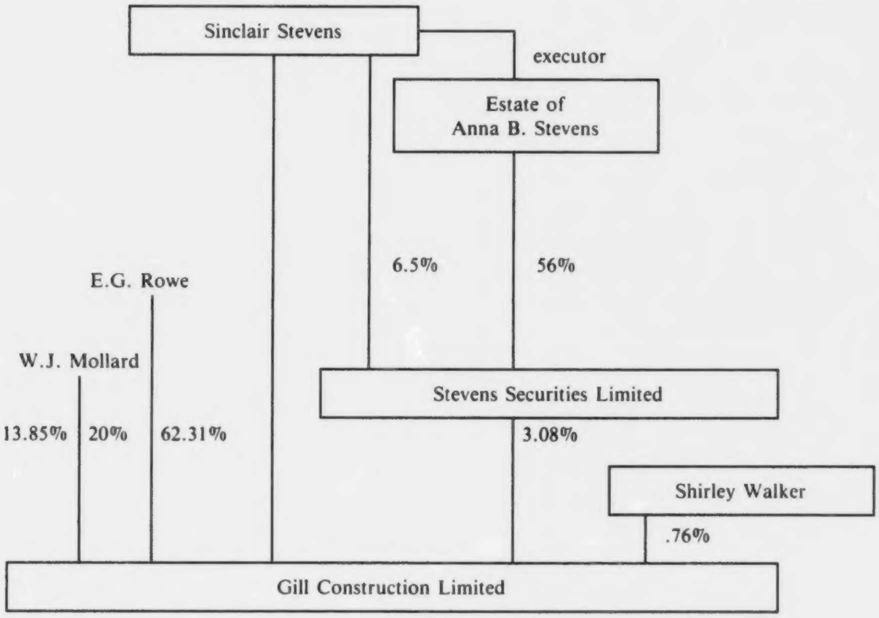
Direct Holdings of Sinclair Stevens: Gill Construction Limited and Stevens Securities Limited

In 1984, when he entered the cabinet, Mr. Stevens' major asset was his shareholding in Gill Construction Limited (Gill). (This shareholding was placed in a blind trust.) Gill was a holding company that had no active business of its own. The voting shareholdings in Gill at that time are set out in figure 5.1. As can be seen, Mr. Stevens was the majority shareholder in Gill. He was also able to vote the Gill shares held by a company called Stevens Securities Limited (Stevens Securities) because of his powers as the sole executor of the estate that controlled it.

As a holding company, Gill had assets consisting of loans to and investments in other companies. In March 1984, 81 percent of Gill's assets consisted of loans to and shares in York Centre. A further 14 percent of Gill's assets consisted of loans to and investments in companies connected with York Centre.

In addition to his shares in Gill, Mr. Stevens' business assets included a small shareholding in Stevens Securities. Stevens Securities had

Figure 5.1 Gill Construction Limited, Voting Shareholdings, September 1984


Sinclair Stevens
executor
Estate of
Anna B. Stevens
6.5%
56%
E.G. Rowe
W.J. Mollard
Stevens Securities Limited
13.85%
20%
62.31%
3.08%
Shirley Walker
.76%
Gill Construction Limited

Source: Exhibit 190, pp. 28, 29, 32, 37; Exhibit 212, p. 2; Exhibit 8, Tab 1, p. 26

originally been set up to provide for the education of Mr. Stevens' nephews, but by 1984 its primary purpose was as a vehicle for borrowing and advancing money to York Centre and companies connected with it. More than 80 percent of Stevens Securities' assets consisted of loans to or investments in York Centre and connected companies.

Indirect Holdings of Sinclair Stevens: York Centre Corporation and Other Companies

Gill's major asset was its shareholding in York Centre, in 1984 a public company traded on the Vancouver Stock Exchange. Gill held the largest single number of voting shares in York Centre. The next largest block was that owned by Mr. Stevens' long-time business associate, Mr. William (Bill) Mollard. One other shareholder had a significant block, with about 10 percent of the votes; the remainder were widely held. The voting shareholdings in York Centre in 1984 are set out in figure 5.2.

Like Gill, York Centre was a holding company with no active business of its own. In 1984 it held major investments in companies with interests in four areas:

- oil and gas;
- real estate;
- strip bond holding and trading; and
- shoe manufacturing.

In 1984 many of York Centre's areas of investment were relatively new, reflecting recent changes in the company's interests. For example, it had embarked on oil and gas investments in 1980–82 and on strip bond activity in 1980, while by 1983 it had ended its historical involvement in building. Its involvement in shoe manufacturing ended in the fall of 1984, when Sisman's Holdings Ltd., owned 49 percent by York Centre, went into receivership.

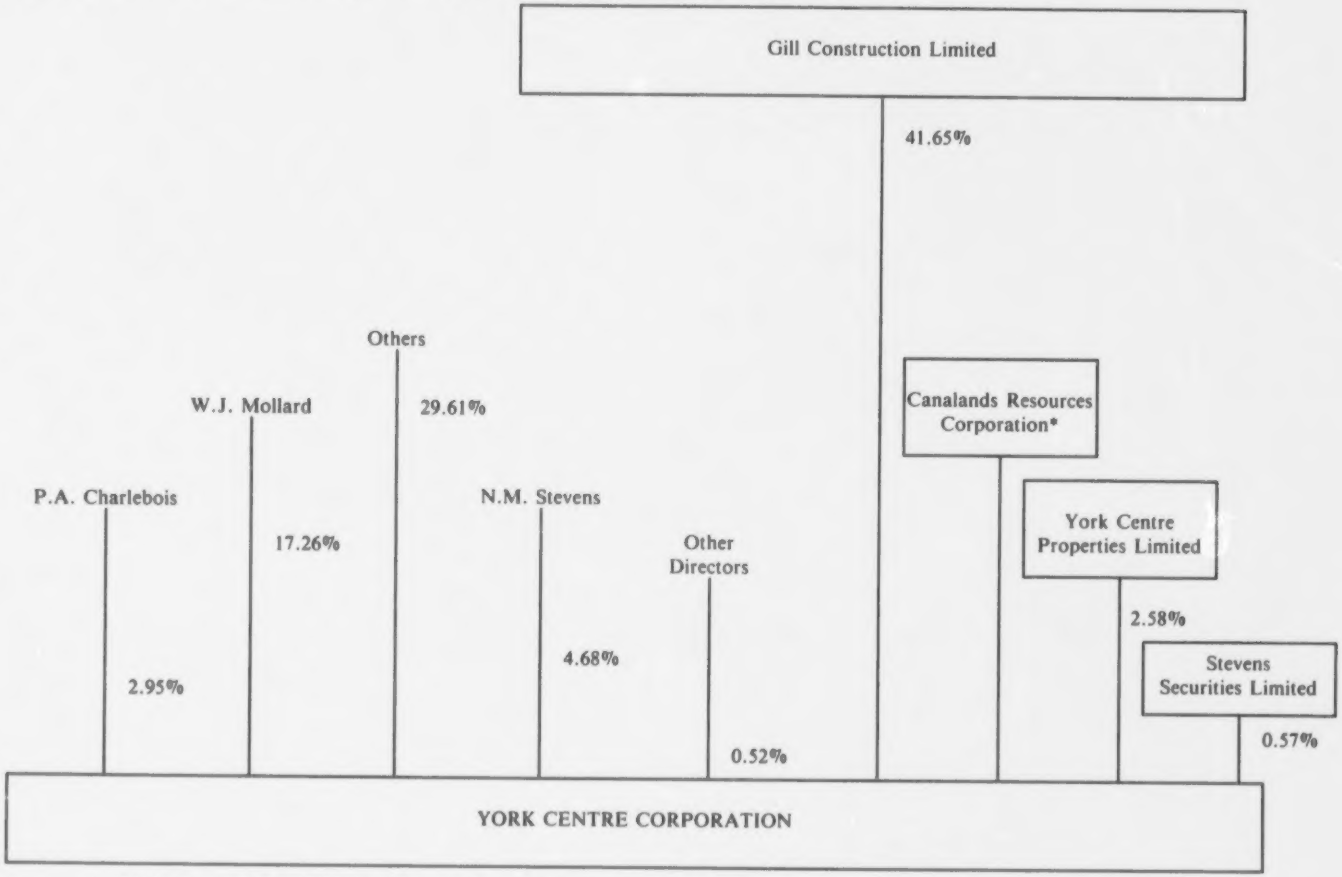
In 1984 Mr. Stevens was president of Gill and Mr. Ted Rowe, who was also his campaign manager, was president of York Centre. Mr. Stevens had been chairman of York Centre from 1981 until late 1983. The board of Gill consisted of Mr. Stevens, his assistant Shirley Walker, who later became a special assistant to him as minister, and Mr. Mollard. Mr. Mollard and Miss Walker also held offices in York Centre and Mr. Rowe and Mr. Mollard were directors.

I now turn to the companies in which York Centre held investments.

Oil and Gas

In 1984 York Centre's interests in oil and gas were mainly held through investments in Sentry Oil & Gas Corp. (Sentry) and Canalands

Figure 5.2 York Centre Corporation, Voting Shareholdings, September 1984


Gill Construction Limited
41.65%
Others
29.61%
W.J. Mollard
17.26%
P.A. Charlebois
2.95%
N.M. Stevens
4.68%
Other Directors
0.52%
Canalands Resources Corporation*
York Centre Properties Limited
2.58%
Stevens Securities Limited
0.57%
YORK CENTRE CORPORATION

Sources: Exhibit 99, p. 113; Exhibit 111-1, p. 229; Exhibit 190, pp. 8-9, 13-15
*Shares held by Canalands could not be voted — Percentages for other companies therefore do not take account of this shareholding.

Resources Corporation (Canalands), both of which it controlled directly or indirectly (see figure 5.3). According to the 1984 annual report, oil and gas investments comprised 79 percent of York Centre's assets, but produced virtually no revenue.

In 1984 Sentry was a public company traded on the Vancouver Stock Exchange. It had been incorporated late in 1980, in part by Gill and York Centre. York Centre obtained control of Sentry late in 1982. In 1984 Canalands was also a public company whose shares were traded on the Alberta Stock Exchange. Canalands had been formed from a merger in 1983 of Canalands Energy Corporation (Canalands Energy) and Invermere Resources Inc. (Invermere). York Centre had participated in the incorporation of Canalands Energy late in 1980, obtaining control of it by the end of that year. York Centre had taken over Invermere by early 1983; it then sold its Canalands Energy shares to Invermere and the merger took place.

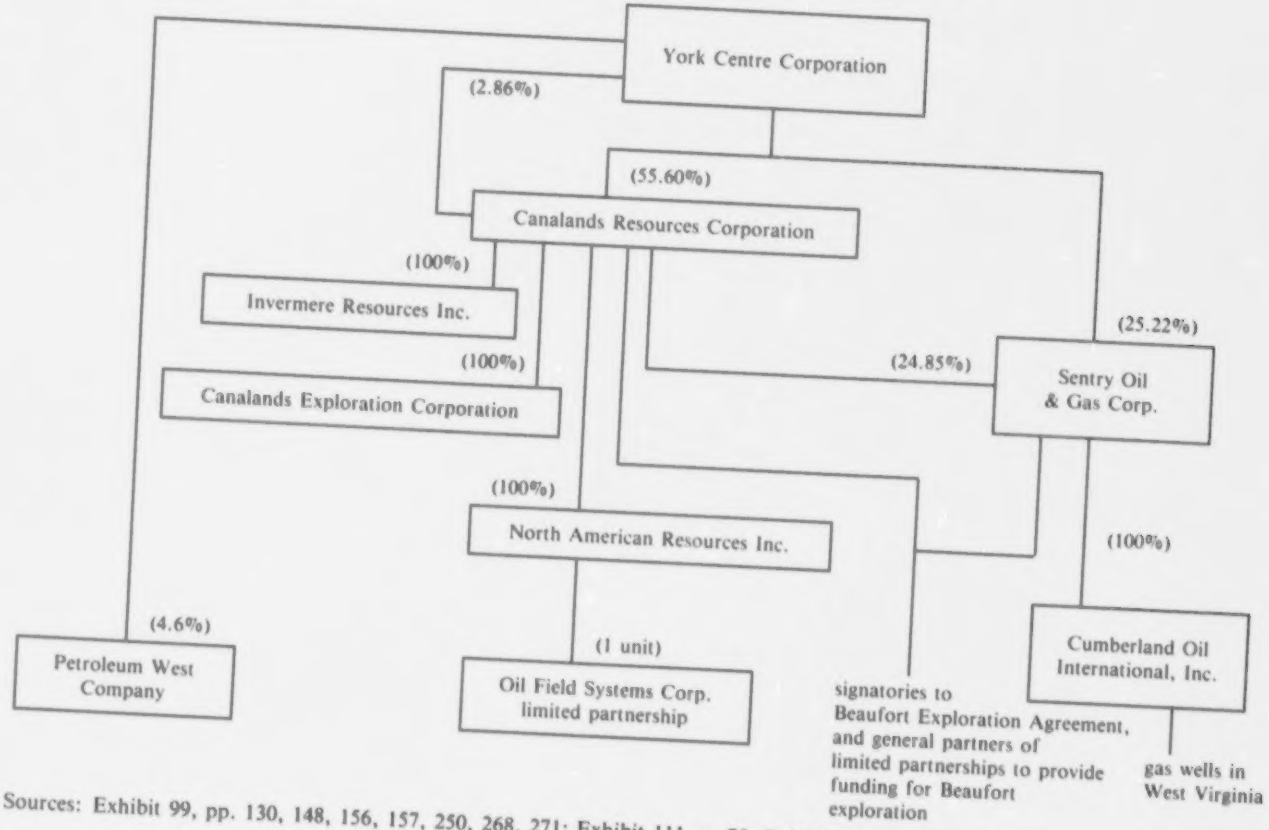
Canalands' and Sentry's principal investment was established through an agreement Canalands Energy reached with Esso Resources Canada Limited (Esso) in May 1982 for exploration and development of oil and gas deposits in the Beaufort Sea. By 1984, owing to the substantial funding requirements for this activity, Sentry and Canalands had reached an agreement with AT&S Exploration Ltd. (AT&S) which provided for AT&S to assume their exploration-funding requirements in return for a share of their interest in the ultimate revenues from the Beaufort exploration.

Sentry and Canalands also had other, less significant investments in oil and gas, as did York Centre. Sentry was the sole owner of Cumberland Oil International Inc. (Cumberland), and Canalands was the sole owner of North American Resources Inc. (North American). Cumberland and North American were U.S. companies with investments in U.S. exploration and interests in several producing gas wells. York Centre also owned a small percentage of the shares in another oil and gas company.

To assist it in entering the oil and gas field, York Centre had added two executives, J. Donald Macgregor and Michael Neary, in 1980. Mr. Macgregor was experienced in the oil industry, and, as the technical expert, he commissioned or received geological data, valuations, and reports of exploration activity which he analyzed and summarized. Mr. Neary was experienced in financial analysis. Both men assisted with equity and debt-financing proposals. Successful proposals in which they were involved included Canalands bank loans and a Sentry share issue. In 1984 Mr. Macgregor was the president of Canalands and Sentry and a director of both companies, and Mr. Neary was an officer in both companies and a director of Canalands.

At that time, Mr. Rowe, Miss Walker, and Mrs. Noreen Stevens, Sinclair Stevens' wife, were associated either with Sentry or Canalands, Mr. Rowe being chairman and a director of Canalands, Mrs. Stevens secretary and a director of Sentry, and Miss Walker an officer of Canalands. Mr. William Mollard was a director of Canalands.

Figure 5.3 York Centre Investment in Oil and Gas Resources, September 1984


York Centre Corporation
(2.86%)
(55.60%)
Canalands Resources Corporation
(100%)
Invermere Resources Inc.
(100%)
Canalands Exploration Corporation
(25.22%)
(24.85%)
Sentry Oil & Gas Corp.
(100%)
North American Resources Inc.
(100%)
(4.6%)
Petroleum West Company
(1 unit)
Oil Field Systems Corp. limited partnership
signatories to Beaufort Exploration Agreement, and general partners of limited partnerships to provide funding for Beaufort exploration
Cumberland Oil International, Inc.
gas wells in West Virginia

Sources: Exhibit 99, pp. 130, 148, 156, 157, 250, 268, 271; Exhibit 111, p. 78; Exhibit 190, pp. 88,89, 105-6

Real Estate

In 1984 York Centre itself owned shares in three companies, Cardiff Construction Co. Limited (Cardiff Construction), the Highlands of King Investments Group Limited (Highlands), and Clady Farm Limited (Clady Farm). Cardiff Construction in turn had a number of subsidiaries, and these subsidiaries, Clady Farm, and Highlands owned real estate. The shareholdings in this area are set out in figure 5.4.

With the exception of York Centre Properties Woodbine Limited, York Centre had complete ownership of all the real estate companies either directly or indirectly. Mrs. Stevens described York Centre's real estate subsidiaries as "really the same company . . . incorporated . . . primarily to comply with the Planning Act" (Transcript, vol. 62, p. 10,596). Mr. Stevens himself testified that the companies were "generally looked upon as the real estate division" (Transcript, vol. 69, p. 11,843). Indeed, in the spring and early summer of 1985 the real estate companies, apart from Clady Farm and York Centre Properties Woodbine Limited, were amalgamated into Cardiff.

The real estate held by the companies consisted of developed industrial sites, vacant land, and farm property in Ontario and Alberta. From the evidence, it appeared that the real estate companies had constructed and leased buildings on various properties prior to the 1980s but that this development activity had ceased by 1984. There was also evidence from the internal records of creditors indicating that some properties were sold between 1982 and 1984. According to York Centre's 1984 annual report, 13 percent of its assets consisted of revenue-producing commercial and industrial properties and land held for development.

Two individuals had specific association with the real estate companies. Mr. William Mollard was president of the eight companies in 1984. He continued to be one of the persons who dealt with creditors in September 1984 but, according to Mr. Stevens, was then approaching retirement and inclined to lessen his activity in the companies.

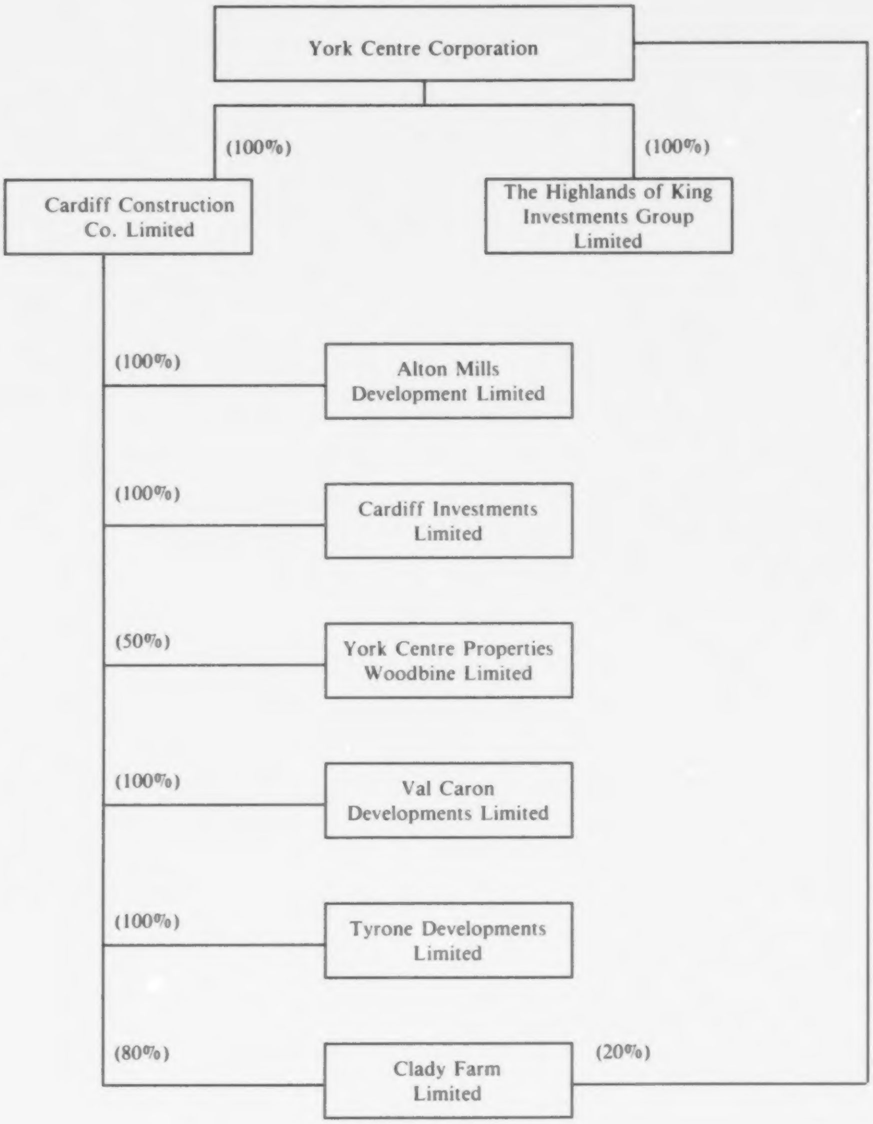
In 1984 Mr. Douglas Hopkins held the title of vice-president in three of the subsidiaries, was a director of five, and managed them along with Mr. Mollard. The evidence showed that Mr. Hopkins had dealt with one of the creditors of Cardiff Construction, Guaranty Trust Company of Canada, and had had a role in refinancing two properties.

Mr. Rowe, Mrs. Stevens, and Miss Walker held positions in most of the real estate subsidiaries in addition to their involvement in oil and gas, Mr. Rowe being an officer in two companies and a director of six, Mrs. Stevens an officer in seven companies and a director of two, and Miss Walker an officer in all eight companies and a director of three.

Strip Bonds

The other area of investment was strip or stripped bonds. A strip bond is an ordinary bond (typically issued or backed by a government) that has

Figure 5.4 York Centre Real Estate Shareholdings, September 1984


York Centre Corporation
(100%)
(100%)
Cardiff Construction Co. Limited
The Highlands of King Investments Group Limited
(100%)
Alton Mills Development Limited
(100%)
Cardiff Investments Limited
(50%)
York Centre Properties Woodbine Limited
(100%)
Val Caron Developments Limited
(100%)
Tyrone Developments Limited
(80%)
Clady Farm Limited
(20%)

Sources: Exhibit 98, pp. 140, 141, 261; Exhibit 99, pp. 74, 75, 214, 215 been separated into two components, the interest coupon(s) and the so-called "residual," the issuer's promise to pay the principal amount. Either component may be referred to as a strip bond. Investments are made in the strip bonds themselves or in securities that afford an investor a right in pools of such bonds. Mr. Stevens was one of the initial developers of the strip bond business in the early 1980s. The business was successful at first because, like all deferred interest vehicles at that time, the strip bonds allowed investors to avoid paying income tax until they actually received the interest some years later. In late 1981 Canada's tax laws were changed to require payment of tax on accruing but unpaid interest at intervals of no longer than three years.

In 1984 York Centre's involvement with strip bonds was primarily through its investments in Royal Cougar Services Inc. (Royal Cougar) and Georgian Trust and Life Assurance Company Limited (Georgian Trust), a Turks and Caicos corporation, both of which Mr. Stevens was instrumental in founding, and secondarily through its investments in Georgian Equity Corporation (Georgian Equity), a Georgia corporation, and York Centre Properties Limited (YCPL). Its interests in these companies are set out in figure 5.5.

Georgian Trust was incorporated in 1980 as a result, according to Mrs. Stevens, of discussions Mr. Stevens had had with her over some years about the financial concept of strip bonds. In 1984 it held a significant portfolio of B.C. Hydro and Ontario Hydro residuals. Since these did not mature for some time, this investment provided no revenue to York Centre. Georgian Equity was activated in 1980, having been established some years earlier by Mr. Stevens and an Atlanta partner. In 1984, Georgian Equity was used as a financial intermediary for various companies both inside and outside the bond group. Royal Cougar was incorporated in 1982 and became active in 1983. Its business was the retail sale of strip bonds or securities backed by strip bonds. YCPL, incorporated in 1962, was activated to act as Georgian Trust's agent on a loan in 1983.

In 1984 York Centre held the majority of the voting shares in Royal Cougar and, as far as is known, in YCPL. As for Georgian Equity and Georgian Trust, there was a considerable amount of evidence regarding ownership and control. In figure 5.5, the broken line connecting York Centre to Georgian Equity represents a convertible promissory note from Georgian Equity held in 1984 by York Centre. Gill originally obtained this conversion right in 1980. The conversion privilege was contained in an agreement which provided that the debt could be changed to shares in Georgian Equity. Mr. Stevens entered into this agreement on behalf of Georgian Equity, and Miss Walker signed for Gill. If the agreement were triggered, the owner of the note would then own 30,000 shares, which on Georgian Equity's share structure in 1984 would have amounted to about 91 percent of the shares. The evidence was that the agreement was never triggered.

There was also evidence that Mrs. Stevens held about 49 percent of the 3075 shares in Georgian Equity outstanding in 1984. It was been separated into two components, the interest coupon(s) and the so-called "residual," the issuer's promise to pay the principal amount. Either component may be referred to as a strip bond. Investments are made in the strip bonds themselves or in securities that afford an investor a right in pools of such bonds. Mr. Stevens was one of the initial developers of the strip bond business in the early 1980s. The business was successful at first because, like all deferred interest vehicles at that time, the strip bonds allowed investors to avoid paying income tax until they actually received the interest some years later. In late 1981 Canada's tax laws were changed to require payment of tax on accruing but unpaid interest at intervals of no longer than three years.

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There was also evidence that Mrs. Stevens held about 49 percent of the 3075 shares in Georgian Equity outstanding in 1984. It was suggested, however, that she held most of these shares in trust, under a trust apparently not reduced to writing until 1986.

I find that York Centre's interest convertible into shares provided it with effective control of Georgian Equity and thus also Georgian Trust.

In 1984 Mr. Philip MacDonald was the president and a director of Royal Cougar and YCPL, having joined both in 1983. He managed Royal Cougar's operations. Mr. Stevens was the president and one of the two directors of Georgian Equity until July 1984, when he was replaced by Mrs. Stevens. Mrs. Stevens and Miss Walker were associated with YCPL and Royal Cougar. Miss Walker was an officer of Georgian Trust and Mrs. Stevens a director. Mrs. Stevens became an officer and director of Georgian Equity in 1984 on her husband's resignation.

Officers and Directors

In 1984 a small group of people were officers and/or directors in a number of the companies in which Gill and York Centre had an interest. I have mentioned, for example, the positions of Mr. and Mrs. Stevens, Miss Walker, Mr. Rowe, and Mr. Mollard, each of whom was associated with companies in more than one area of York Centre's business; the others mentioned, such as Mr. Neary or Mr. Hopkins, held operating positions in one area. In addition to these individuals, there were officers and directors who apparently were less actively involved. The officers and directors of the various companies in 1984 are set out in tables 5.1, 5.2, 5.3, 5.4, and 5.5.

Table 5.1 Officers and Directors, Gill and Stevens Securities, September 1984

Officers and Directors	Gill Construction Limited	Stevens Securities Limited
Officers		
Chairman	—	—
President	S. Stevens	S. Stevens
Vice-president	W. Mollard	—
Secretary	S. Walker	E. Bailey
Other	N. Stevens	A. Stevens S. Walker
Directors	W. Mollard S. Stevens S. Walker	E. Bailey J. Bailey A. Stevens S. Stevens

Sources: Exhibit 8, tab 1, pp. 25, 68; Exhibit 8, tab 2, pp. 33, 34; Exhibit 180, p. 2; Exhibit 190, pp. 3–5; Productions of Mr. Stevens

Table 5.2 Officers and Directors, York Centre, 1984

Officers and Directors	York Centre Corporation
Officers	
Chairman	—
President	E. Rowe
Vice-president	W. Mollard
Secretary	S. Walker
Other	A. Wofford
Directors	L. Bodie
	J.P. Charlebois
	P.A. Charlebois
	D. McPhail
	W. Mollard
	E. Rowe
	B. Shekter
	S. Walker
	J. Wintermeyer
	A. Wofford

Sources: Exhibit 8, tab 2, p. 33; Exhibit 99, pp. 23, 116; Exhibit 190, pp. 3–5; Productions of Mr. Stevens

Table 5.3 Officers and Directors, Real Estate Companies, 1984

Officers and Directors	Cardiff Construction Co. Limited	The Highlands of King Investment Group Limited	Alton Mills Development Limited	Cardiff Investments Limited	York Centre Properties Woodbine Limited	Clady Farm Limited	Tyrone Investments Limited	Val Caron Developments Limited
Officers								
Chairman	—	—	—	—	—	—	—	—
President	W. Mollard	W. Mollard	W. Mollard	W. Mollard	W. Mollard	W. Mollard	W. Mollard	W. Mollard
Vice-president	—	E. Rowe	D. Hopkins	—	R. Leslie	E. Rowe	D. Hopkins	D. Hopkins
Secretary	S. Walker	S. Walker	N. Stevens	N. Stevens	S. Walker	N. Stevens	S. Walker	S. Walker
Other	J.P. Charlebois N. Stevens		S. Walker	J.P. Charlebois S. Walker	M. Leslie N. Stevens	S. Walker	N. Stevens	N. Stevens
Directors	W. Mollard J.P. Charlebois D. Hopkins E. Rowe	W. Mollard E. Rowe S. Walker	W. Mollard D. Hopkins E. Rowe	W. Mollard N. Stevens D. Hopkins J.P. Charlebois E. Rowe	W. Mollard S. Walker R. Leslie M. Leslie	W. Mollard N. Stevens E. Rowe	W. Mollard D. Hopkins E. Rowe	W. Mollard D. Hopkins S. Walker

Sources: Exhibit 8, tab 2, p. 33; Exhibit 180, pp. 1,2; Exhibit 190, pp. 3–5; Productions of Mr. Stevens

Table 5.4 Officers and Directors, Oil and Gas Companies, 1984

Officers and Directors	Canalands Resources Corporation	Sentry Oil & Gas Corp.
Officers		
Chairman	E. Rowe	—
President	D. Macgregor	D. Macgregor
Vice-president	M. Neary	—
Secretary	—	N. Stevens
Other	S. Walker	M. Neary
Directors	D. Macgregor D. McPhail W. Mollard M. Neary E. Rowe A. Wofford	L. Bodie D. Macgregor D. Schwartz N. Stevens A. Wofford

Sources: Exhibit 99, pp. 134, 160; Exhibit 180, pp. 1, 2; Exhibit 190, pp. 3–5; Productions of Mr. Stevens

Table 5.5 Officers and Directors, Bond Companies, 1984

Officers and Directors	Georgian Equity Corporation	Georgian Trust & Life Assurance Company Limited	York Centre Properties Limited	Royal Cougar Services Inc.
Officers				
Chairman	—	—	—	—
President	S. Stevens/N. Stevens[1]	P. Peary	P. MacDonald	P. MacDonald
Vice-president	—	—	N. Stevens	—
Secretary	G. Thrasher	P. Savory	S. Walker	N. Stevens
Other	S. Walker	S. Walker	—	S. Walker
Directors	G. Thrasher S. Stevens/N. Stevens[1]	A. Morris P. Peary P. Savory N. Stevens	P. MacDonald N. Stevens S. Walker	P. MacDonald N. Stevens S. Walker

Sources: Exhibit 8, tab 2, p. 33; Exhibit 156, p. 4; Exhibit 180, pp. 1, 2; Exhibit 190, pp. 3–5, 134; Exhibit 214, p. 43; Productions of Mr. Stevens

[1] Mr. Stevens resigned on July 18, 1984, and Mrs. Stevens replaced him.

Other Relationships among the Companies

From the formal aspects of their corporate structure, such as their officers, directors, and shareholdings or potential shareholdings, it is clear that these companies formed an interlocking network. The full extent of their interconnection emerged, however, from evidence about their financial relationship and their operation.

Financial Relationships

Most of the assets of the two holding companies consisted of shares in and loans to the other companies of the group. In 1984 such shares and loans comprised 95 percent of Gill's assets and 97 percent of York Centre's assets. The figures for Stevens Securities, Georgian Equity, and YCPL were similar. Shares and loans to the other companies or individuals involved with them comprised 91 percent of Stevens Securities' assets, 91 percent of Georgian Equity's assets, and 99 percent of YCPL's assets. The viability and worth of Gill and Stevens Securities, Mr. Stevens' direct assets, of York Centre, the major holding company, and of Georgian Equity and YCPL thus depended on the performance of the group as a whole.

The interdependence of the companies was also illustrated in some instances by the large percentage of its liabilities one company might owe to the others. This was not true of all the companies since some of them needed, and were able to obtain, external financing. In addition, the liabilities' figures did not take account of actual interdependence where the external liability was undertaken on behalf of another company (as YCPL did for Georgian Trust), or where external liabilities of one company were guaranteed by one or more of the others.

The holding companies, Gill and York Centre, were able to generate outside funds, and thus most of their liabilities were external. However, the outside financing typically involved support from one or more of the other companies in the form of a guarantee. For example, York Centre had guaranteed Stevens Securities' debt; Georgian Trust had guaranteed YCPL's debt; the real estate subsidiaries had guaranteed debt incurred by York Centre and Cardiff Construction jointly and by Cardiff Construction alone; and various of the companies had guaranteed debt owed by each of the oil companies.

The companies also provided less formal support for one another. Georgian Equity and Stevens Securities, which along with Gill were described by Mr. Stevens as financial intermediaries, maintained margin accounts at Toronto brokerages in which they placed shares of the public companies from time to time. Essentially, these shares were pledged to secure funds from the broker. As the shares' value fluctuated, the broker might require additional shares. When Georgian Equity was asked to put up further shares in 1984, Gill "lent" it York Centre shares.

Such relatively informal assistance also occurred when one of the public companies needed financial help in a share issue. In 1983, for example, Stevens Securities purchased the last shares needed to complete Canalands' share issue. In a fairly complex series of steps outlined in figure 5.6, the shares were sold the next year to York Centre for a promissory note, and Stevens Securities used this note as collateral for a bank loan, the proceeds of which were advanced to Gill, York Centre, and Canalands. A second example occurred in 1984. When York Centre's Class B share offering proved largely unsuccessful that year, a number of the companies subscribed for almost all the issue.

Figure 5.6, illustrating Stevens Securities' assistance with Canalands' share issue, also demonstrates another feature of the companies' financial relationship — the advance of funds among them. As can be seen, the proceeds of a bank loan from the National Bank of Canada (National Bank) went from Stevens Securities to Canalands, York Centre, and Gill. Both Mr. Mel Leiderman, the auditor or accountant for many of the companies, and Mr. Bruce Buckley, the auditor for Gill, Stevens Securities, Canalands, and later Sentry, testified that these intercompany advances were common. Their extent was demonstrated by the asset and liability figures referred to earlier, and was also noted in accountants' working papers placed in evidence before me. Mr. Stevens testified with respect to Gill, for example, that the cash it received was "often, if not almost inevitably, loaned back into one of the York Centre companies" (Transcript, vol. 69, p. 11,837).

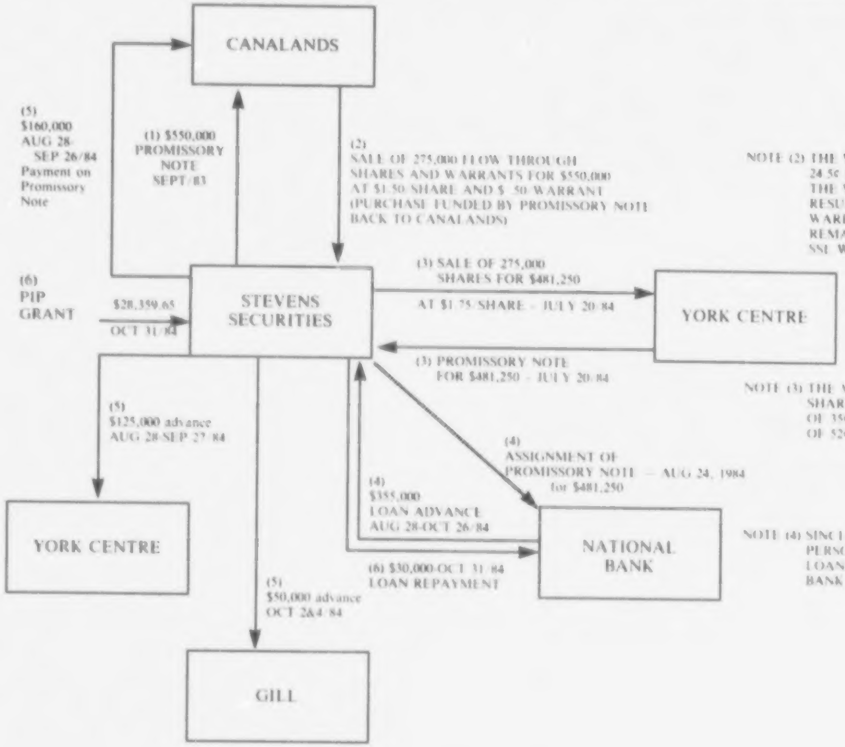
Such advances were usually made informally and not documented at the time. Mr. Buckley testified, for example, that in his experience there was little documentation of interest rates and legal terms for these loans. The advances were not only informal in terms of documentation, they were also made freely among the companies without regard to whether borrower and lender(s) shared a common area of business or had any direct ownership relation.

An example of the coordination and joint effort involved was an occasion on which Gill gathered together funds from YCPL, Stevens & Stevens, and Mr. Stevens, added its own contribution, and then transferred the total amount to Canalands.

Administrative and Structural Relationships

In 1984 the various companies all shared common premises in the Commerce Court West office building in Toronto, the oil companies having moved from nearby offices in late 1983. York Centre and Canalands also shared staff, dividing the salaries of Miss Walker and bookkeeper Mrs. Joan Foulkes between them. Although Miss Walker apparently also worked for many of the other companies, none of these companies, according to the documentary evidence, absorbed a portion of her salary.

Figure 5.6 Purchase, Sale, and Assignment of a Canalands Share Issue by Stevens Securities


CANALANDS
STEVENS SECURITIES
YORK CENTRE
YORK CENTRE
NATIONAL BANK
GILL
(1) $550,000 PROMISSORY NOTE SEPT/83
(2) SALE OF 275,000 FLOW THROUGH SHARES AND WARRANTS FOR $550,000 AT $1.50/SHARE AND $ .50/WARRANT (PURCHASE FUNDED BY PROMISSORY NOTE BACK TO CANALANDS)
(5) $160,000 AUG 28-SEP 26/84 Payment on Promissory Note
(6) PIP GRANT
$28,359.65 OCT 31/84
(3) SALE OF 275,000 SHARES FOR $481,250 AT $1.75/SHARE - JULY 20/84
(3) PROMISSORY NOTE FOR $481,250 - JULY 20/84
(4) ASSIGNMENT OF PROMISSORY NOTE — AUG 24, 1984 for $481,250
(4) $355,000 LOAN ADVANCE AUG 28-OCT 26/84
(6) $30,000-OCT 31/84 LOAN REPAYMENT
(5) $125,000 advance AUG 28-SEP 27/84
(5) $50,000 advance OCT 2&4/84

NOTE (2) THE WARRANTS WERE SOLD IN 1983 FOR 24.5¢ EACH. THE COST ALLOCATED TO THE WARRANTS WAS 50¢ EACH, WHICH RESULTED IN A LOSS OF 25.5¢ PER WARRANT. THE COST OF THE REMAINING SHARES IN THE BOOKS OF SSL WAS $412,500

NOTE (3) THE VALUE OF THE CANALANDS SHARES RANGED FROM A LOW OF 35¢ TO A HIGH OF 52¢ IN JULY OF 1984

NOTE (4) SINCLAIR STEVENS PROVIDED HIS PERSONAL GUARANTEE FOR THIS LOAN FROM THE NATIONAL BANK

Sources: Exhibit 212, p. 70; Transcript, vol. 71, pp. 12,353-54

Certain of the companies were nominally headquartered elsewhere. Georgian Trust was based in the Turks and Caicos Islands. Mr. Leiderman testified that, when he visited the headquarters of Georgian Trust in 1980, there was no bond inventory and no record of bond transactions kept there. There was no indication of any decisions involving that activity being made by persons in the Turks and Caicos, and the evidence about the company's holdings and financing indicated that in 1984 it had invested exclusively in Canadian bonds, had obtained its funding from Canadian-based institutions, and maintained active bank accounts in Canada. I conclude there was no effective management of Georgian Trust from elsewhere than York Centre personnel in Canada.

Georgian Equity was based in Atlanta, Georgia. Its principal asset was its interest in Georgian Trust. Mr. Stevens, Georgian Equity's president until 1984, described the company as a financial intermediary. I note his comment that "other than kind of intermediary banking functions, [Georgian Equity] did not have certainly a day-to-day activity" (Transcript, vol. 69, p. 11,877). Georgian Equity maintained Toronto brokerage and bank accounts to carry out such functions. I find it too was effectively managed by York Centre personnel in Canada.

The management relationships among the companies were illustrated by evidence of actual and proposed "management fees" charged or to be charged by some of the companies to others. For example, in 1979 York Centre charged management fees to Cardiff Construction, the subsidiary that indirectly owned most of the real estate. Management fees were also charged to various real estate subsidiaries in 1983 and 1984. Similar fees were proposed by Mr. Stevens, in the context of a plan to merge Gill and Stevens Securities in 1983, and by Mr. Rowe, in the context of another reorganization plan in 1984. In 1983 the plan to merge Stevens Securities and Gill was to result in management fees being charged to the real estate subsidiaries and Royal Cougar for services in obtaining financing and new business arrangements. The 1984 plan called for York Centre to charge management fees to Canalands, Sentry, Gill, and a new financial services company, which was to hold York Centre's interests in Georgian Trust and Royal Cougar. (Neither of these reorganization plans was implemented.)

There was also evidence of common management of the companies. For example, Sentry and Canalands held a joint board meeting in 1984. Because the primary investment of both companies was their interest in the same exploration in the Beaufort Sea, and they shared common operating management and ownership, I have no doubt there were other occasions of common management and, indeed, every reason for them.

Opinions about the Companies' Relationships

Mrs. Stevens, Mr. Rowe, and Mr. Leiderman all referred in their testimony to the companies as a "group," although Mrs. Stevens was careful to point out that she did not regard them as family companies in the sense of being controlled by her husband and herself. Mr. Stevens too used the word "group" to describe the companies. However, he divided them into two, the "York Centre group" and the "Georgian group." Nonetheless, the use of the word indicates that the companies, in whole or in part, were seen as a single entity. This view was shared by others.

Bank records supplied by the Canadian Imperial Bank of Commerce (CIBC) indicate it had concluded in 1983 that Gill controlled York Centre and therefore grouped together loans originally advanced separately to Gill and Stevens Securities, and to York Centre and Cardiff Construction. Certain brokers and financiers (for example, Trevor Eyton, Anthony Fell, and Jack Lawrence) also associated Mr. Stevens and his family with control of York Centre; and the internal records of other creditors showed that they too associated Mr. Stevens with various companies such as YCPL, Cardiff Construction, Georgian Trust, Gill, Canalands, and Sentry.

Summary

In September 1984 Mr. Stevens' major business asset was his shareholding in Gill. Gill's major asset in turn was an interest in York Centre, a holding company with investments in other companies. York Centre had actual or potential control of most of these companies. I have reviewed the administrative and financial intimacy and interdependence of these companies in some detail. From this it is clear that in fact they operated as a unit, undertaking coordinated business strategies. The pattern of informal connections among them was too substantial to be random or to suggest anything other than orchestration. The interlocking offices and directorships held by a small number of people are consistent with and support this conclusion.

The question remains, at least in a theoretical sense, whether the direction of the companies can be traced to Gill or Mr. Stevens. In other words, did Gill have the power to control York Centre and Mr. Stevens the power to control Gill? Mr. Stevens denied both propositions.

Mr. Stevens noted that although he was the majority shareholder of Gill, he was only one of three directors and could be outvoted by the other two (Shirley Walker, his secretary, and William Mollard, his long-time associate) if an issue arose about how Gill's shareholdings in York Centre should be voted. In such a case, he said, his only recourse would be to begin injunctive proceedings or call a special meeting of shareholders to replace the board.

Mr. Stevens raised other hypothetical situations to deny that Gill controlled York Centre. He first defined control as unfettered ownership of 51 percent of the voting power of the shares needed to elect the directors of the company. He then pointed out that since Gill had less than this amount in York Centre, some other person could buy up a majority of the voting power and take control of York Centre. In other words, if someone could solicit the roughly 2500 small shareholders of York Centre, purchase or gain voting rights over a large number of these shares, and do the same with Mr. Mollard's block of shares, he or she could gain control of York Centre.

Mr. Stevens was correct in his analysis of these hypothetical situations. But his assertions had nothing to do with the actual situation in York Centre and Gill, or with the issues of whether Gill had the power to control York Centre and Mr. Stevens the power to control Gill.

As a practical matter, public companies such as York Centre can be effectively controlled by shareholders, like Gill, that hold substantially less than 50 percent of the voting power. This was recognized by Mr. Alfred Powis, the president of Noranda Inc., when he testified of his own company: "Brascan has effective control of Noranda. . . . [I]t has approximately 45 per cent of the stock" (Transcript, vol. 49, p. 9052). In circumstances such as these, where Gill held a number of shares sufficient to block any competing interest from gaining control unless it first obtained the right to vote a large number of widely held shares, Gill was able to make the fundamental corporate decisions in York Centre and its subsidiaries despite having only a minority interest. In fact, the York Centre companies appear to have operated free from any influence or constraint exercised by outside shareholders. Fundamental corporate decisions, such as entering or leaving entire areas of business, were reached during the 1980–84 period without any sign that the will of the largest shareholder was being frustrated or influenced or that any other will predominated. Thus, not only was Gill in a position to exercise practical control over York Centre, but all signs pointed to the fact that it had such control and was using it.

It is interesting to note that before this Inquiry began, Gill and York Centre personnel took the view that Gill effectively controlled York Centre. They expressed their views on this to others, typically to reassure them that matters would continue as they had in the past. Mr. Rowe wrote the Hanil Bank in 1984: "Gill . . . has effective voting control of York Centre. . . . Effective control remains with Gill. Day-to-day operations continue with existing management" (Exhibit 102, p. 202). And Miss Walker wrote the trustee of Mr. Stevens' blind trust in 1984: "Gill has effective voting control of York Centre Corporation" (Exhibit 35, p. 26; Transcript, vol. 5, p. 682). Mr. Stevens also agreed, subject to his hypotheses about takeovers, that the word "control" could be used to describe Gill's shares in York Centre. In 1983, describing part of Gill's shareholding in York Centre (the common shares), he wrote urging CIBC to give them a greater value: " . . . these shares represent the critical control block" (Exhibit 106, p. 219). Asked about this comment at the Inquiry, he admitted that he "was pointing out there is a control subject to various limitations" (Transcript, vol. 71, p. 12,328).

On the basis of the practical control that a share block such as Gill's in York Centre would give in circumstances where no competing interest could influence the company without convincing a large number of minority shareholders to join it, as well as on the evidence that the companies, including Gill, operated together without any sign of such a competing interest, I conclude that Gill effectively controlled York Centre. As for Mr. Stevens' control of Gill, his resources and rights as the majority shareholder placed him in a position to prevent the Gill board from doing anything with which he did not agree and, subject to minority shareholders' rights, to undertake whatever he wished. I conclude without the slightest hesitation that Mr. Stevens controlled Gill.

I have found that the companies in which York Centre had actual or potential majority control operated together. Given the conclusions I have reached about Mr. Stevens, Gill, and York Centre, I find that Mr. Stevens' business assets comprised the entire group of companies described in this chapter. They will be referred to in this report as the York Centre group of companies.

Chapter 6

Financial Condition of the York Centre Group of Companies

In media reports that set out the conflict of interest allegations, Mr. Stevens' businesses were said to have financial problems at the relevant times ranging from serious cash flow difficulties to being bankrupt. It is important to review and assess these suggestions before turning to the allegations.

The Commission received a great deal of evidence concerning the financial condition of the York Centre group of companies. This evidence came primarily from four sources:

- the testimony of York Centre's bankers, along with internal bank memoranda and bank correspondence with York Centre;
- the testimony of persons involved with attempts to provide financing to York Centre, along with their notes and written evaluations;
- the testimony of York Centre's auditors and accountants, along with their documents; and
- the testimony of the management of York Centre, along with documentation and financial records of the companies.

This chapter reviews the companies' financial condition between 1983 and 1986, first referring to York Centre's consolidated financial statements for these years and then setting out a chronology of events concerning both the development of the financial problems and attempts to deal with them.

The Consolidated Financial Statements of York Centre

Overall, York Centre's investments in oil and gas, real estate, and strip bonds resulted in a loss during 1983–86. York Centre's audited consolidated financial statements disclose losses for each of the following years ending June 30 to be:

1983	$ 297,767
1984	$ 582,633

1985	$1.133,172
1986	$ 234,516.

Further, the financial statements of York Centre, Canalands, and Sentry for 1984, 1985, and 1986 each contained a note regarding the future operations of each company. The note was additional information to shareholders and prospective investors. The note to the 1984 financial statement of York Centre, which was essentially the same as for the subsequent two years, stated:

> Furthermore, the majority of the company's assets are investments in petroleum and gas properties which have not reached revenue-producing status.
>
> Accordingly, in order to realize the carrying value of its assets and discharge its liabilities in the normal course of business, the company is dependent upon raising additional equity capital, attaining overall profitable operations, and the ability of its affiliates to realize the carrying value of their assets and discharge their liabilities in the normal course of business.
>
> (Exhibit 99, tab 6)

The note thus indicated that the valuation of York Centre's assets on the financial statement was dependent on the company's remaining financially viable. In other words, were the company not able to raise additional capital or achieve profitability, its assets would have to be liquidated, and, by implication, the attributed value might be less.

The evidence established that the primary reason for the lack of profitability was that the company's investment in the Beaufort Sea produced no revenue. Although certain reserves of gas and oil had been found in the Beaufort Sea, these reserves were not easily exploited because of the large expenditures required to bring them to market, coupled with a decline in world oil and gas prices. At the time, it was unlikely that this investment would generate any income in the foreseeable future, which meant that York Centre's largest asset would not contribute to its achieving profitable operations and thus that additional capital was needed.

Chronology of Events Relating to Financial Condition

1983 – Summer 1984

The principal banker for York Centre throughout this period was CIBC. In 1983 CIBC was concerned about the debt level of the York Centre group of companies. The bank had not received adequate information from the company, which was already having difficulty servicing its debt, and it doubted whether the value of the investment in the Beaufort Sea was sufficient to support the value of Canalands shares that it held as security. In a letter dated February 11, 1983, Mr. Stevens gave a commitment to CIBC to reduce the loan to Gill by $300,000 by June 30. A further commitment was made by a formal letter of undertaking in May 1983 that the York Centre/Cardiff Construction loan would be reduced to a maximum of $2 million by July 31, 1983. During this period, correspondence between CIBC and York Centre reveals that CIBC was worried about the continuing negative cash flow at York Centre. The bank also understood that the debt reduction proposed would be accomplished through equity issues and the sale of real estate.

During 1983 the Hanil Bank lent three of the York Centre companies, Gill, Cardiff Construction, and YCPL, a total of $3.55 million, some of which was used to pay off CIBC's loans to Stevens Securities/Gill and to pay down the York Centre/Cardiff Construction indebtedness to CIBC in return for CIBC releasing certain properties held as security. Despite the latter paydown, York Centre/Cardiff Construction indebtedness to CIBC was reduced only to $3.8 million and not the desired level of $2 million. However, CIBC continued to carry the account, because of repeated assurances that other debt financing from, for example, Guaranty Trust would be forthcoming, and because the bank was awaiting the results of a rights offering of shares being planned by York Centre.

In the spring of 1984 York Centre completed its rights offering of Class B shares and warrants, which attempted to raise $2 million. Mr. Rowe reported to the bank in early April 1984 that this offering was profoundly disappointing to York Centre. It had raised only $25,000 in cash of the $2 million sought. When it appeared that the results of the offering would be unsatisfactory, York Centre requested certain affiliates to take some of the rights offering, which resulted in an exchange of debt for equity. The failure of the rights offering, combined with the significant losses disclosed on the financial statements of the various York Centre companies, confirmed CIBC's desire to see its loans to York Centre substantially reduced, if not liquidated.

On May 4, 1984, CIBC wrote to York Centre indicating that it was not willing to continue its support on the present basis to the York Centre group of companies unless the problems with the account were resolved satisfactorily by June 5, 1984. Failing this, CIBC wanted a specific repayment schedule that would liquidate the loans in an orderly fashion. On June 5, 1984, Mr. Stevens and Mr. Rowe met with Mr. Roland Wagg and Mr. Miller of CIBC to discuss the bank's concerns. At the bank's insistence, York Centre agreed to reduce its loans, through the sale of real estate or other refinancing methods, to $2 million by January 31, 1985. As far as the bank was concerned, York Centre was at last prepared to reduce its indebtedness through the liquidation of real estate assets. The bank believed that an orderly disposition of assets would give it the best possible result and that York Centre personnel, being familiar with the properties, were in the best position to effect the liquidation. On this basis, CIBC agreed to continue to carry the account.

On June 8, 1984, the CIBC inspector's report downgraded York Centre's loan to non-performing accrual, which indicated there was a possibility that not all the loan would be repaid. This reclassification resulted in increased monitoring of both the account and the performance of the companies.

Also in the spring of 1984, CIBC expressed concern about the value of York Centre's investment in the Beaufort Sea, characterizing it as "speculative." The bank was unwilling to lend further funds with this investment as collateral. York Centre found this investment increasingly difficult to carry. Under the farmout agreement with Esso, Canalands and Sentry were required to contribute to exploration costs, which were substantial. These costs consistently contributed to the negative cash flow of York Centre. By June 1984 the oil companies were essentially drained dry of cash, and, as York Centre could do little to assist, they were unable to meet their cash calls from Esso. Consequently, they signed promissory notes for these amounts. As a longer-term method of coping with this problem, they entered into an agreement with AT&S whereby AT&S acquired the right to earn a portion of their interest in the Esso program in return for its assuming payment of 100 percent of their exploration expenses. The agreement with AT&S had the effect in the period 1984–86 of reducing the companies' interest in the Esso Beaufort program by at least 60 percent.

September 1984

Thus when Mr. Stevens entered the cabinet in September 1984, York Centre was facing a deadline for debt reduction from its principal banker, CIBC, and was no longer able to fund its share of the exploration expenses related to its investment in the Beaufort Sea. The position of York Centre at this time is described in a letter from Ted Rowe to Mr. Stevens that was found in the York Centre file maintained in Mr. Stevens' Ottawa office. The letter outlines topics for a meeting held on September 30, 1984, two weeks after Mr. Stevens entered the cabinet. The meeting was attended by Mr. and Mrs. Stevens, Mr. Rowe, Mr. Mollard, and Miss Walker. The letter is significant for its analysis of York Centre's financial condition, its outline of the options available to York Centre, and the insights it provides into the relationships among York Centre's key personnel. For these reasons, I set it forth in full below:

> September 28, 1984
>
> Dear Sinc:
>
> Realizing your busy schedule and that it is only going to get busier, I feel it is imperative we have a meeting this weekend to discuss York Centre's concerns. I would suggest that Bill Mollard, Shirley and Noreen attend such a meeting.

I can understand your possible frustration with yet another weekend meeting, but I believe we need your input in order to make some significant decisions as well as get everyone's input.

I know your thoughts regarding the B shares as well as a possible York Centre Offering but the fact is, I am unable to presently facilitate either one, and some decisions have to be made until we are in a position to raise public funds.

After last weekend's meeting, Noreen and I met with Ron Graham regarding the real estate and he will not have an answer for us until next week. If in fact he comes back with a negative answer we should have a secondary plan in place such as using Carpenter or trying to sell the properties outright.

I fully understand your reasoning for wanting to do a package deal, but if we cannot sell it, we should make an alternative move and list the properties.

To do a participating mortgage alone is not enough. We will still have the large monthly mortgage payment and it will only work if we cut some of our present overheads.

It is easy for me to say sell our lands but Bill Mollard is not interested in selling anything. He does not say it in as many words, but he strongly feels we have levered the land to the limit in order to stay in the Beaufort and does not want the raw land sold because of future deals that may come along.

I, as President of York Centre do not have a problem of saying sell the raw land, but if we go that route, and I believe we should, I want your support and want you to be aware of Bill's attitude regarding such sales.

If Bill does not agree to selling land maybe this is the time to structure a deal to take Bill out of York Centre.

Also, to cut overheads we should move the real estate out of Toronto and rent the space to Royal Cougar.

I believe we should also be trying to restructure our debt in Canalands. I met with the Walwyn people this week and they do not offer any encouragement other than if the market turns, they would be prepared to move quickly. They are also concerned about the debt Canaland's has with Esso and the Continental and therefore find it difficult to do a private placement where we would keep control. They also wonder what effect the new energy policy will have on future investors.

I met Thursday with Maynard Energy regarding American and Canadian Properties. As I told you last weekend, there was cash flow of 50–60 U.S. per year. What I was not aware of was that there were capital cost requirements of $40,000.00 last year. Capital cost for the coming year could range from 0–40 depending on the drilling equipment. After conversations with Lee Matchett and looking at the Invermere farmouts, I honestly do not believe there is any useful purpose of having our operations man going over the same material.

Mr. Matchett would sell his 30% American interest for $100.00 (U.S.) [sic].

As we owe Maynard $330,000.00, one option could be to borrow $430,000.00 and pay Maynard off as well as purchase his 30% interest and use the entire cash flow of $70,000.00 U.S. to service

> the debt. I met with Financial Trustco and Canadian Commercial regarding a production loan against the properties and will be working with them again next week.
>
> A production loan does little other than shift the debt.
>
> I would propose we approach Maynard with the idea of forgiving the $430,000.00 debt plus the $200,000.00 and $400,000.00 Debentures and take an interest in our Beaufort program such as AT & S did, leaving us with the $70,000.00 American cash flow. I would also propose we talk to the Continental about a similar arrangement.
>
> Maynard does have an interest in working out an arrangement with Canalands and is looking for us to make a proposal.
>
> In regards to Sisman's, the Bank of Nova Scotia will be back to me on Tuesday. If they do not want to work with us on our restructuring plan then I recommend we put it into receivership. We cannot operate under the present structure and I have laid the factory off next week on the basis of lack of work until I get some direction from the Bank.
>
> Our creditors are waiting for some positive announcement regarding Sisman's and our Customers are beginning to wonder if they place orders with us, will they in fact get these orders.
>
> In fairness to the present Sisman's Shareholders and Management, the Sisman's future has to be decided next week.
>
> Sinc, I do not treat my job lightly at York Centre and wish I could paint a better picture, but the fact is, we are fighting for our survival. You have some good loyal people working with you who need your guidance in structuring a survival package.
>
> Topics for Discussion
>
> 1. Ideally the best solution would be to have some brokerage firm take our B shares and market them. To date I have been unsuccessful in finding any interest. Do you have any fresh thoughts or approaches I could take.
> 2. Get a participating mortgage. If not, sell vacant land.
> 3. Talk to Maynard Energy and Continental Bank regarding their taking an interest in the Beaufort.
> 4. If the Bank of Nova Scotia does not support our Sisman's plan, put it in Receivership.
>
> No matter how quick we move unless there is a quick sale of the B shares or extended lines of credit, we will be unable to cover our interest obligations for the month of October.
>
> (Exhibit 47)

At the meeting on September 30, 1984, the group discussed Mr. Rowe's concern that CIBC might call its loan or put more pressure on York Centre if something were not done by January 31, 1985. There was also discussion about raising money through an equity issue or through liquidating real estate properties. According to Mr. Rowe, it was Mr. Stevens who had originally suggested the possibility of raising money through a participating mortgage, a possibility mentioned in the letter. Mrs. Stevens characterized the situation facing York Centre at this time as a serious cash flow problem that could be solved by voluntary liquidation, by selling off assets, or possibly by a merger with another corporation that had sufficient cash to take advantage of York Centre's assets. What is forcefully clear from the letter and the tenor of the discussions is that York Centre was in a state of crisis, and that the company was pursuing a variety of strategies and possibilities, without success.

Fall 1984

In September or October 1984 Mr. James (Jim) Davies of Richardson Greenshields became involved in developing a proposal to raise financing for York Centre. Richardson Greenshields had dealt with York Centre in the past when it handled a share issue for Canalands. Mr. Rowe, Mr. Davies' main contact at York Centre during this period, referred in his testimony several times to the possibility that Mr. Stevens mentioned Mr. Davies' name as someone who might find investors. Mr. Davies had been responsible, Mr. Rowe said, for interesting York Centre in the Invermere takeover in 1982. In the fall of 1984 Mr. Davies developed an offering memorandum proposing an issue of between $6.5 and $10 million of unsecured floating-rate notes with interest payable in York Centre shares in lieu of cash. Richardson Greenshields would act as York Centre's agent for the placement of these notes.

On October 19, 1984, Mr. Davies had a dinner meeting with Mr. and Mrs. Stevens. Mr. Stevens testified that at the dinner he suggested to Mr. Davies that he contact Mr. Trevor Eyton, president of Brascan, for advice or assistance with respect to financing York Centre. As a result of this suggestion, Mr. Davies wrote to Mr. Eyton on October 29, 1984, enclosing a copy of the offering memorandum of that date. Around this time, Mr. Rowe also contacted Mr. Eyton to arrange a meeting. In early November Mr. Rowe, Mrs. Stevens, Mr. Eyton, and Mr. Clarke of the Great Lakes Group Inc. (Great Lakes), a company affiliated with Brascan, met to discuss the Richardson Greenshields proposal and Mr. Eyton's ideas for potential investors. Mr. Eyton testified that he may also have referred either Mr. Rowe or Mr. Davies to Mr. Patrick (Pat) Keenan, an outside director of Brascan, at Keewhit Investments. After the meeting, Mr. Eyton requested his associates at Hees International Corporation (Hees), another company associated with Brascan, to assess the proposal. (Various companies associated with Brascan are set out in Chapter 21, figure 21.1.) Mr. Rowe and Mr. Davies followed up with Keewhit. Around this time, Mr. Eyton also spoke to Mr. Keenan about the York Centre financing.

Earlier, in late October, CIBC had been asked to provide a guarantee in the form of a letter of credit for the proposed floating-rate note offering. On November 26, 1984, CIBC wrote to York Centre agreeing in principle to provide the letter of credit subject to certain strict conditions, including the liquidation of all debts to CIBC, Guaranty Trust, and Hanil Bank and a pledge of security in the form of government bonds.

On December 10, 1984, the management of York Centre met with Mr. Tim Casgrain and Mr. Manfred Walt of Hees to discuss the Richardson Greenshields proposal. The next day Mr. Casgrain and Mr. Walt reported by memorandum to Mr. Eyton that the proposal did not meet Hees' investment criteria for the following reasons:

- York Centre's primary investment was in the Beaufort Sea, which Hees regarded as speculative, too long term, and subject to changes in the National Energy Program in relation to Petroleum Incentive Program (PIP) grants which would affect York Centre's main source of funding;
- the investment instrument provided for a low rate of interest to be paid in the form of shares, not cash, and subordinated to all other securities; and
- the proposed investment instrument lacked any subordination by management of its voice in the company's affairs.

This assessment effectively ended any further consideration of the Richardson Greenshields proposal by Hees.

Winter 1984–85

The letter from Mr. Rowe set forth earlier mentions Canalands' debt to the Continental Bank of Canada. Mr. Richard Ross of that bank testified that after November 1984 the bank received neither repayment of principal nor payment of interest on this loan. The bank had lent approximately $1.5 million to Canalands Energy as a short-term loan in spring 1982. This loan was to be repaid in full by late 1982 or early 1983. However, by December 1983 the bank realized that this repayment was not going to occur. In fact, by June 1984 the bank realized that Canalands was having difficulty not only with arranging sources for repayment of principal but also with servicing the debt.

As the January 31, 1985, CIBC deadline referred to earlier approached, Mrs. Stevens and Mr. Rowe met with senior officials in the head office of CIBC, including Mr. C.W. (Peter) Cole, senior executive vice-president, and undertook to reduce York Centre's indebtedness to the bank. Mrs. Stevens informed bank officials that efforts were under way to arrange external financing for York Centre that would make moneys available for this purpose. The bank pressed its view that York Centre should liquidate its assets. On January 28, 1985, Mr. Wagg, the branch manager, wrote to his superiors as follows: "we are not prepared to let our position deteriorate further and in light of the lack of material progress in marketing the private placement [the Richardson Greenshields proposal] we have reverted to the company's earlier commitment to reduce loans through the sale of properties" (Exhibit 109, p. 16). At this time York Centre was in the process of selling off real estate holdings, but the closings for some of these transactions had been delayed.

On February 2, 1985, Mr. Mills, vice-president of CIBC, authorized the carrying of the account until March 31, 1985, on the basis that the net proceeds of the sale of all properties must go to the bank and, further, that the bank must approve in advance *all* cheques issued by York Centre. This decision was communicated to Mr. Rowe, who began to provide CIBC with lists of cheques that York Centre intended to issue. At this time there was a $75,000 monthly cash flow deficiency at York Centre, which the bank indicated needed to be addressed without further delay. Shortly thereafter, CIBC received York Centre's 1984 financial statements, which indicated that in 1984, on revenues of $799,397, York Centre had a loss of $582,633. Mr. Wagg testified that these statements showed that York Centre's financial position had deteriorated since 1983.

CIBC began discussions with York Centre in order to obtain additional security for the bank. On February 11, 1985, the senior vice-president and chief inspector of CIBC decided to defer reclassification of the account until April 30, 1985, but with the following caveat: "If loans do not reduce as now expected; if there are doubts as to the ultimate safety of our loans; or if it becomes necessary to begin capitalizing interest; I would expect the account to be classified promptly" (Exhibit 109, p. 34). The branch was now reporting the account's loan position daily to head office as well as seeking prior authorization from head office for all cheques.

On January 21, 1985, Mr. Eyton called Mr. Jack Lawrence, chairman of Burns Fry, and Mr. Tony Fell, chairman of Dominion Securities, and asked them to look at the feasibility of refinancing York Centre. Mr. Wilmot (Wil) Matthews of Burns Fry and Mr. James (Jim) Davie of Dominion Securities subsequently undertook an evaluation of York Centre. During late January and February they met with Mr. Rowe a number of times as well as with other York Centre personnel, such as Mr. Macgregor, to collect information, particularly with regard to the oil and gas investments.

By February 20, 1985, Burns Fry had completed its preliminary analysis and concluded that York Centre was a bad investment. The biggest difference of opinion between Burns Fry and York Centre was on the valuation of the oil and gas assets. Burns Fry valued York Centre's 50 percent interest in Canalands at between nil and $2 million, whereas Mr. Macgregor placed the value at $9.7 million. Burns Fry's valuations put the net asset value of York Centre at between $.02 and $2.79 per share, depending upon the values attached to Cardiff and Canalands.

At the same time, Mr. Davie also reached a negative opinion with respect to the prospects of a York Centre financing, concluding that it was not financeable or marketable by Dominion Securities. It was difficult to put a hard value on the investment in the Beaufort Sea because Dominion Securities regarded the prospect of any cash flow from this investment until the next century as unlikely. The conclusion as to the net realizable value of York Centre was between $2.4 and $2.7 million, or $1.31 to $1.47 per share. In contrast, the Richardson Greenshields preliminary offering memorandum for the floating-rate notes indicated a pro forma asset value of $7.09 to $7.14 per share and suggested a $6.50 conversion price per share. In January 1985 York Centre shares traded on the Vancouver Stock Exchange at prices between $4.40 and $5.50. Although Dominion Securities adjusted its numbers modestly higher after further analysis, its ultimate opinion did not change.

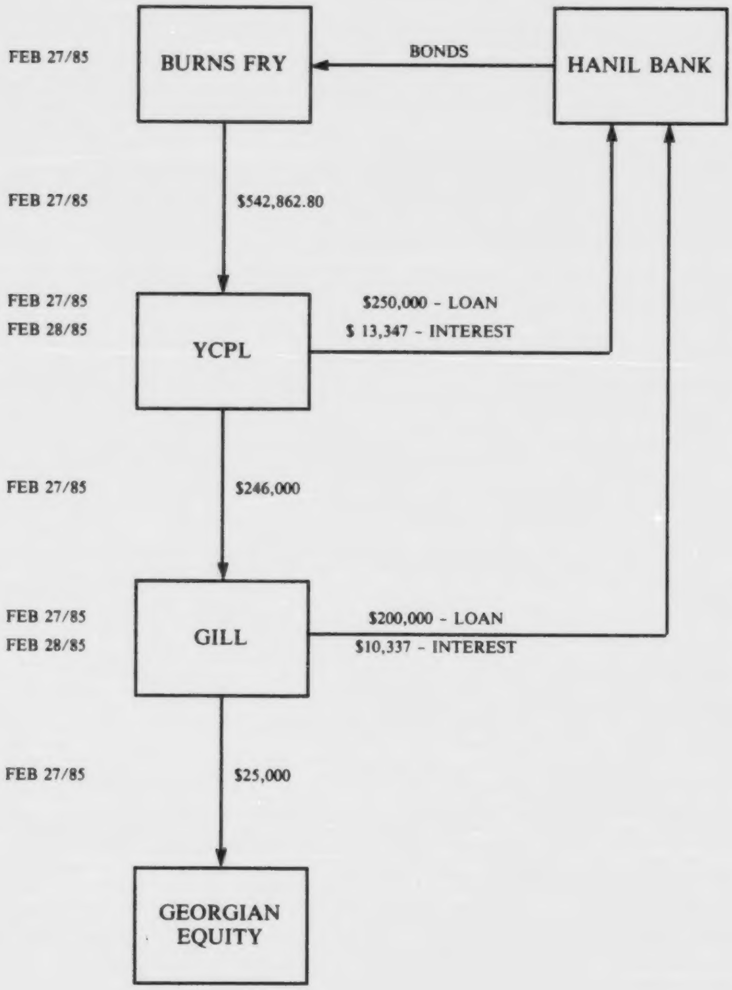
On February 28, 1985, Mr. Davie met with Mr. Matthews and they agreed that York Centre was not financeable on reasonable terms. This conclusion was transmitted to Mr. Rowe. In late March 1985 Mr. Lawrence of Burns Fry told Mr. Eyton that the best plan for York Centre was to reduce its liabilities, cut its overhead, and sell its assets carefully.

At the suggestion of Mr. Cole at CIBC, Mr. Rowe had also approached Mr. Gordon Eberts of Gordon Capital on February 15, 1985, and forwarded to him both the Richardson Greenshields draft preliminary offering memorandum and financial statements for York Centre and its public subsidiaries. Mr. Cole had told Mr. Rowe that Gordon Capital, which had a reputation for creative financing, might be helpful. Mr. Cole later spoke to Mr. Eberts with regard to a possible joint action between CIBC and Gordon Capital to finance York Centre. In the end, CIBC rejected participation by itself because that would only further expose CIBC.

At the end of February 1985 Georgian Trust sold its portfolio of B.C. Hydro strip bonds for $542,862. YCPL acted as the Canadian agent for Georgian Trust. Most of the sale proceeds, illustrated in figure 6.1, went to pay down the YCPL loan from Hanil by $250,000 and the Gill loan from Hanil by $200,000. It is a telling comment on the relationship between Georgian Trust and the others in the York Centre group that Georgian Trust, the owner of the bonds, did not receive any of the proceeds of the bond sale.

In March 1985 Mr. Rowe and Mrs. Stevens began to meet with Ms. Jocelyn (Jo) Bennett of Gordon Capital about York Centre financing. Ms. Bennett prepared a floating-rate note issue she believed could be arranged with Canada Permanent. She met with Mr. Rowe and Mrs. Stevens to discuss this proposal on March 28, 1985. The next day they met with representatives of Canada Permanent, who expressed concern about the cash flow difficulties in York Centre. Ms. Bennett then started to explore the idea of a third party guaranteeing the interest to Canada Permanent. None of these proposals came to fruition.

Figure 6.1 B.C. Hydro Bond Sale, February 1985


FEB 27/85
BURNS FRY
BONDS
HANIL BANK
FEB 27/85
$542,862.80
FEB 27/85
FEB 28/85
YCPL
$250,000 - LOAN
$ 13,347 - INTEREST
FEB 27/85
$246,000
FEB 27/85
FEB 28/85
GILL
$200,000 - LOAN
$10,337 - INTEREST
FEB 27/85
$25,000
GEORGIAN EQUITY

NOTE: ALL CHEQUES AND CORRESPONDENCE
ARE SIGNED BY SHIRLEY WALKER

Source: Exhibit 191, pp. 76-78, 82-88

Spring 1985

On March 19, 1985, Mr. Mills of CIBC authorized carrying the York Centre account until April 15, 1985, on the basis of the bank's obtaining additional security on real property from York Centre and on the assumption that the bank would receive some of the proceeds from certain real estate sales and ventures. Apart from $180,000 received from the sale of a Calgary property on February 22, 1985, CIBC had not yet received any proceeds from sales in 1985. By April 19, 1985, one planned sale had gone through, but CIBC received none of the proceeds, which went primarily to Guaranty Trust. The closing of a limited partnership deal had also been delayed. There was, therefore, no permanent loan reduction to the bank.

Late in April 1985 Mrs. Stevens completed negotiations for a loan to Cardiff and Highlands from Anton Czapka for $2.62 million that was scheduled to close on May 16, 1985. (The transaction with Mr. Czapka is discussed in more detail in Chapter 20.) In early May Mrs. Stevens met with CIBC officials and presented them with a debt-reduction schedule based primarily on the anticipated proceeds from the Czapka loan. On May 16, 1985, as scheduled, CIBC received $1.4 million from the proceeds of the loan. This was a substantial paydown of York Centre's debt to CIBC, and greatly increased CIBC's comfort level. The remainder of the proceeds were divided between the Hanil Bank ($1 million to retire its loan to Cardiff Construction) and Guaranty Trust ($200,000).

Throughout the spring and summer of 1985, apart from Clady Farm and the properties mortgaged under the Czapka loan, many real estate properties held by York Centre were either sold or its interests in them diluted.

In the spring of 1985 York Centre took a number of steps to lower overhead costs, including reducing its operations, staff, and office space. The Royal Cougar operations were terminated, which led to the departure of Mr. MacDonald and his assistant, Ms. Viki Martin. Mr. Mollard and Mr. Hopkins, who handled the day-to-day operations for the much-reduced real estate branch, both retired by the summer of 1985. Mr. Macgregor, president of Sentry and Canalands, and his assistant, Mr. Neary, moved to part-time employment after they were informed that, owing to the illiquid position of the company, they would be paid only for work specifically requested of them. Mr. Rowe, president of York Centre, had his salary reduced, accepted a position with Jems Manufacturing, and devoted only part of his time to York Centre.

Summer 1985

On May 17, 1985, Mrs. Stevens and Mr. Rowe met with Mr. Eyton, Ms. Bennett, and Mr. Clarke to discuss the current financing proposals.

They concluded that more work should be done and more thought should be given to the proposals. On June 3, 1985, Ms. Bennett met with Mr. Clarke, who informed her that the latest financing proposal did not have much appeal for Brascan or Great Lakes. At this point York Centre and Gordon Capital began to consider instead conventional equity financing. Ms. Bennett sent a proposal for conventional equity financing to Mr. Eyton on June 13. On July 5, 1985, Ms. Bennett, Mr. Rowe, Mrs. Stevens, Mr. Eyton, and Mr. Clarke met to consider whether equity financing could be structured with an underwriting consortium. There was also discussion of possible Great Lakes investment in the issue. On July 8, 1985, Mr. Eyton telephoned Mr. Lawrence and Mr. Fell to set up a meeting to determine whether there were any alternatives left for York Centre. Given Gordon Capital's new proposal, Mr. Eyton felt it might be worthwhile to examine York Centre once more.

Burns Fry evaluated the proposal, but maintained its view that the oil and gas assets of York Centre were worth very little. Mr. Matthews of Burns Fry testified that his company valued the oil and gas properties at between $1 and $2 million, whereas Gordon Capital, based on York Centre's figures, valued them at $32 million.

The head office of the Hanil Bank in Seoul, Korea, approved the renewal of the Gill and YCPL loans in a July 2, 1985, telex to Mr. Arnold Denton of the bank's Toronto office. However, it directed Mr. Denton to continue to monitor the value of the collateral for the Gill loan closely to make sure the loan was not undermargined. The collateral for the loan was York Centre shares. In early July Mr. Denton spoke with both Miss Walker and Mr. Rowe about the "bad rumours on the street" that the firm was in a "cash crunch" (Transcript, vol. 17, p. 2669). He also commented that they would soon be two months in arrears on their interest payments and that, if this should occur, he would have to report the fact to his superiors in Seoul.

Mr. Eyton arranged a meeting for August 7, 1985, with Messrs. Clarke of Great Lakes, Lawrence of Burns Fry, Fell of Dominion Securities, and Neil Baker of Gordon Capital, the purpose being to get advice about a possible public financing for York Centre. However, Mr. Eyton was not overly optimistic that anything could be done for York Centre. The meeting itself was relatively short, about 30 minutes. The group quickly came to the consensus that nothing could be done for York Centre that made sense commercially. The financial condition of York Centre was deteriorating under increased pressure and the next two or three months would be critical. Various financing proposals were discussed, but all were dismissed as unfeasible. Both the size of the company and the size of the proposed share issue were a problem. Further, as Mr. Eyton testified, the Beaufort did not have "a very good ring" to it and any new investor would be at a substantial risk; moreover, under the proposal, the "up-side potential" remained with the existing shareholders, including "the Stevens family," who would continue to control the company (Transcript, vol. 51, pp. 9332–33).

On August 8, 1985, Mr. Eyton met with Mr. Rowe and, according to his diary, Mrs. Stevens, to convey the results of the previous day's meeting. At the Inquiry Mr. Eyton was referred to an entry in Shirley Walker's notebook about the meeting, which states "$1 MILL GIFT — won't solve problems" (SW–4–137). Mr. Eyton testified that he might have explained the gravity of the situation to Mr. Rowe thus:

> I may have said in extremis "Ted, $1 million is not going to help the company." In other words, I was trying to relate to the financing problem that York Centre had and trying to quantify it. We were not talking of a half a million dollar problem or a million dollar problem; we were talking about something more than that.
> (Transcript, vol. 51, pp. 9342–43)

Further in this discussion on August 8, Mr. Eyton suggested that York Centre should consider an orderly liquidation of its assets and that Hees would be willing to assist in such a process. This meeting signified the end of any significant assistance by Mr. Eyton to York Centre, although he did meet briefly with Mr. Rowe in September and November to offer advice.

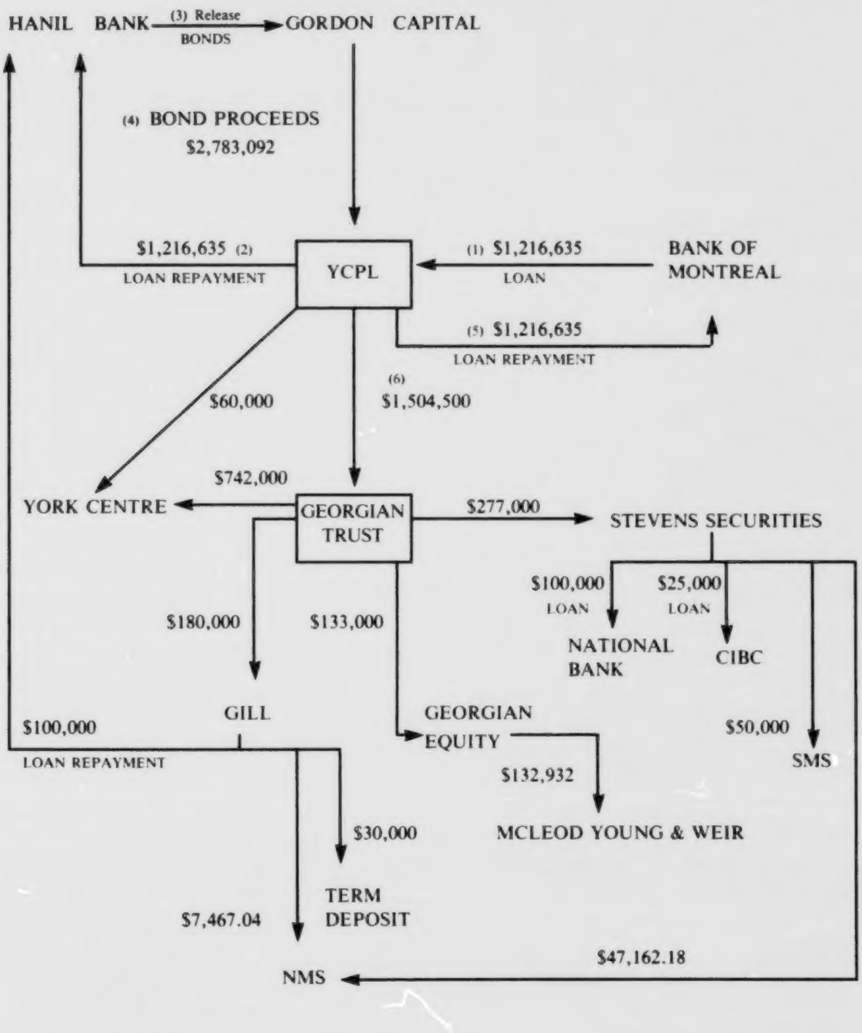
During this period one further financing proposal was brought into being. In May 1985 Richardson Greenshields, through Mr. Davies, prepared a proposal for a $10 million loan from the First Interstate Bank. It was contemplated that the security for this loan would be the Ontario Hydro strip bond portfolio of Georgian Trust. Mr. Davies testified that this proposal was sent to Mr. Michael Mann of First Interstate, who seemed interested. However, in mid-August 1985 Georgian Trust sold the bond portfolio on which this proposal was based, and the matter was not pursued further.

These events in the summer of 1985 effectively marked the end of the search for financing for York Centre. Mr. Rowe testified that in the period from the fall of 1984 to the summer of 1985, York Centre approached approximately 20 financial institutions with proposals for financing York Centre and that none of these approaches was successful. In the period from November 1984 to the end of November 1985, the value of York Centre's shares trading on the Vancouver Stock Exchange fell from $8.50 to $1.50.

As just noted, in mid-August 1985 Georgian Trust sold almost all the remainder of its portfolio of Ontario Hydro strip bonds, receiving proceeds of $2,783,092. In this transaction, YCPL, as it had in the February bond sale, acted as the Canadian agent for Georgian Trust. The proceeds of the sale, dispersed through a variety of accounts, served primarily to pay down bank loans of various York Centre companies (figure 6.2).

Proceeds from the sale were also used to pay Georgian Equity's account with McLeod Young Weir in the amount of $132,932 (permitting the release of York Centre shares, which were then used as security for Hanil's loan to Gill). York Centre received proceeds of $802,000, then paid off a debenture to Maynard Energy in the amount

Figure 6.2 Distribution of Proceeds from Ontario Hydro Bond Sale, August 15, 1985


HANIL BANK
(3) Release
BONDS
GORDON CAPITAL
(4) BOND PROCEEDS
$2,783,092
$1,216,635 (2)
LOAN REPAYMENT
YCPL
(1) $1,216,635
LOAN
BANK OF MONTREAL
(5) $1,216,635
LOAN REPAYMENT
$60,000
(6)
$1,504,500
$742,000
YORK CENTRE
GEORGIAN TRUST
$277,000
STEVENS SECURITIES
$100,000
LOAN
$25,000
LOAN
NATIONAL BANK
CIBC
$180,000
$133,000
GILL
GEORGIAN EQUITY
$100,000
LOAN REPAYMENT
$50,000
SMS
$132,932
MCLEOD YOUNG & WEIR
$30,000
TERM DEPOSIT
$7,467.04
$47,162.18
NMS

NOTE: ALL CHEQUES ARE SIGNED
BY SHIRLEY WALKER

Source: Exhibit 191, pp. 101-40

of $406,575 and advanced $203,287 to Canalands, which permitted this company to pay off the other Maynard Energy debenture.

The sale of the bond portfolio is significant for several reasons. It was the disposition of a premier asset that had, for example, been envisaged as an integral element in the First Interstate financing package. Also, it exemplifies York Centre's cash needs at the time, since the proceeds of the sale were used primarily to reduce bank indebtedness and to satisfy current cash needs instead of being used in a new investment. Moreover, the sale of the Ontario Hydro bonds was done at the cost of York Centre's having to record a further loss on its public financial statements. This occurred because the sale resulted in a loss of $1,179,201, which was reflected on the financial statements of Georgian Trust. Through its equity interest in Georgian Trust, York Centre recognized a significant loss on its financial statements, which had the effect of changing York Centre's 1986 income statement from a profit to a loss.

It was argued that the recorded loss from the sale of the bond portfolio was not a real loss because the bonds were sold for more than was paid for them. However, the evidence is that Georgian Trust recorded as revenue the deferred interest on these bonds year by year. Thus, the loss occurred because the recorded revenue from the bonds was higher than the amount realized from the sale.

The evidence of the principals involved is unsatisfactory as to how or why the decision to sell the portfolio was made. In the "Agreed Statement of Facts Regarding the Evidence of Philip MacDonald," it is stated that Mr. MacDonald gave instructions that:

> [S]ome or all of the bonds ... were to be sold when an adequate profit level was reached. He does not recall what that level was to be. Having had nothing to do with the sale in August, 1985 of the Hydro bonds, he has no knowledge as to whether the bonds were sold in accordance with those instructions or otherwise.
>
> (Exhibit 231)

There was no evidence that the bonds were, in fact, sold pursuant to this formula. Given the use made of the proceeds of the sale of the portfolio, I find that the portfolio was sold because of the cash needs of York Centre and not according to the formula.

During this period York Centre reduced the number of its real estate properties. The extent of this reduction is made obvious by reference to the annual reports of York Centre. In 1984 the real estate assets of the company on the consolidated balance sheet were $7,233,226. By 1986 the real estate assets on the consolidated balance sheet were $3,018,532.

Conclusions

I find that when Mr. Stevens entered the cabinet in September 1984 the York Centre group of companies was in serious financial difficulties sufficient to cause concern for the principal owner of the companies, Sinclair Stevens. Indeed, Mr. Stevens testified, "It [York Centre] needed somebody that could tend to the various financing needs that were obviously there when you are long on assets and short on cash flow" (Transcript, vol. 69, p. 11,846). I find that this financial condition had persisted for some time and was deteriorating, especially from the spring of 1984 to the summer of 1985.

During Mr. Stevens' tenure as minister, York Centre had three areas of business interests. Activities in each of these areas were largely confined to the sale of assets as opposed to ongoing business. By the summer of 1985 York Centre had disposed of, mortgaged, or sold under a limited partnership most of its real estate properties. Royal Cougar had ceased activities, and Georgian Trust had sold its bond portfolio and purchased bonds of a greatly reduced present value. The primary remaining asset of York Centre was in its diminishing interest in the farmout agreement in the Beaufort Sea, which was in any event not revenue producing. I find that in this period York Centre effected an orderly liquidation of assets to meet pressing current financial needs caused by its debt obligations.

There was a poor match between York Centre's assets, which were long term and primarily non-revenue producing, and its liabilities, which were short term. As a result, there was not enough cash to cover all ongoing business expenses let alone to service the debt.

During the period in which Mr. Stevens was in the cabinet, there were three principal sources of cash for York Centre:

- funds from the sale of Georgian Trust bonds in February and August 1985 in the amount of $3,325,954;
- funds from the sale of five properties of approximately $4,000,000; and
- funds from the loan by Anton Czapka to Cardiff/Highlands in the amount of $2,620,000.

These funds were used primarily to reduce indebtedness to financial institutions. In the case of the Czapka loan, the transaction permitted a transfer of the debt obligation from the banks to Anton Czapka and also provided a period of interest relief.

In this period the Czapka loan stands out as a source of cash for the company in that, unlike the other significant transactions, funds were generated to reduce debt to financial institutions without the outright sale of assets.

Further I find that in September 1984 Mr. Stevens was fully informed of the financial condition of the York Centre group of companies, including, by his own admission, the pressure from CIBC. He was actively proposing possible courses of action, at a time when, in his words, York Centre "needed management" (Transcript, vol. 69, p. 11,846), and, in the words of Mr. Rowe's letter to Mr. Stevens, York Centre was "fighting for [its] survival."

Chapter 7

Mr. Stevens' Role in the York Centre Group of Companies to September 1984

Mr. Stevens' role in the York Centre group of companies is important for two reasons. First, certain allegations amounted to assertions that he continued to be involved in his private business affairs while he was a cabinet minister. Familiarity with his role in the companies prior to September 1984 will help in assessing the nature and purpose of any continued involvement. Secondly, Mr. Stevens took part in certain meetings (described fully in Part Three) while he was a minister. In his testimony he offered various explanations for his presence at these meetings, which included reference to his prior business activities. It is important to review his earlier role in order to assess these explanations fairly.

Mr. Stevens described himself as quite removed from the daily operations of the companies during most of the 1982–84 period. He said that he had, however, been involved in meetings with certain banks to establish or review a "banking relationship" but was not likely involved in following up such meetings (Transcript, vol. 69, p. 11,847). He said most dealings with banks were carried out by others. Other evidence confirmed that Mr. Stevens dealt with banks, as well as with other entities, facilitating the obtaining of financing and the maintenance of credit. This kind of activity was central to the companies and indeed constituted their major "activity" between 1982 and 1984. This was a period in which, initially, they underwent substantial expansion in the oil and gas and bond areas. Such expansion required financing and Mr. Stevens played a key role in obtaining it. Further, with the exception of Royal Cougar, which engaged in retail sales, the companies were largely investment holding companies; thus, subject to the need to monitor the investments, their business was complete once an investment was made. Others carried out the oil and gas exploration. The bond residuals were simply held. The historical involvement in building had ceased and the rental properties were being administered.

As economic conditions for oil and gas exploration changed, and the tax laws regarding accrued interest changed, the companies faced setbacks which, as outlined in Chapter 6, had become severe by 1984. In this period, maintenance of the credit Mr. Stevens had obtained for expansion became critical. Here too he played a key role. The evidence indicated that he both dealt with existing creditors and was involved in efforts to obtain new financing, both from financial institutions and equity markets. The companies' major business activity became to an even greater degree the protection of its investments and the maintenance of credit. Thus Mr. Stevens' admitted involvement with banks was actually involvement with the most important matters then facing the companies.

Role in Financial Intermediaries

With regard to specific companies, Mr. Stevens agreed that he had been involved in all Gill's operations and that, subject to certain constraints, he was the "control agent" for Stevens Securities (Transcript, vol. 71, p. 12,333). He described both these companies, along with Georgian Equity, as financial intermediaries that obtained funds and passed them on to the others. Although he admitted to being the key person in this respect for Gill and Stevens Securities, he resisted the suggestion that he had been so for Georgian Equity. Other evidence showed the following.

- Mr. Stevens was authorized to trade and did trade on Georgian Equity's account with McLeod Young Weir; no one else but Shirley Walker would have had any authority in this company; and, as the following memo makes clear, Miss Walker regarded him as familiar with it.

> TO: S.M. Stevens SW COPY [handwritten] SEPT. 4/84
> cc: NMS
>
> FROM: S. WALKER
>
> RE: MARTIN TRUAX RESTAURANT VENTURE, ETC.
> GEORGIAN EQUITY INVESTMENT
>
> The way I understand it:
> 1. Georgian Equity invested $100,000 in Cumberland promissory note and sold 25% of its interest to Jim Houston. Result: G.EQ. put up $75,000 and Jim put up $25,000. All this in U.S. dollars.
> 2. Cumberland repaid the $100,000 promissory note. G.EQ. received its $75,000 plus 75% of the PN interest paid. Jim received his $25,000 plus 25% of the PN interest paid.
> 3. G.EQ. took $50,000 of the above $75,000 and reinvested it in one unit of Cumberland (or renamed venture).
>
> . . . .
>
> Now, Sept. 4/84:
> 6. In comes a JH Restaurants Inc. certificate (copy only) for 250,000 shares registered U.S.VENTURES I, LTD.
> Does this represent G.EQ. $50,000 in (3) above.
>
> (Exhibit 100, p. 54)

- Mr. Stevens and Miss Walker executed documents in 1980 giving his company, Gill, potential control of Georgian Equity; and Mr. Stevens later notified CIBC of a plan to sell this interest to York Centre, and carried through the plan.
- Mr. Stevens had incorporated Georgian Equity with an Atlanta partner some years earlier and he made the decision to reactivate it in 1980.
- Until 1984 Mr. Stevens served as president of Georgian Equity and as one of its two directors, the other being its incorporating lawyer, Mr. Grady Thrasher.

Mr. Stevens' Gill and Stevens Securities activities included the following: he obtained a $1.1 million loan for Gill from Hanil in 1983; he caused Stevens Securities to help Canalands on a 1983 share issue; he advised CIBC of an abortive plan to merge Gill and Stevens Securities and then collect management fees for arranging the Guaranty Trust/Royal Cougar co-venture to sell strip bonds, the Canalands share issue, and a real estate pool financing; he dealt generally with CIBC and Hanil, creditors of Gill and of Stevens Securities; he guaranteed a loan Shirley Walker arranged for Stevens Securities during the election in 1984; and he set up a brokerage account for Stevens Securities in the same year.

Role in York Centre

With regard to York Centre, Mr. Stevens said his role was passive and that his return to the company as chairman in 1981 was a response to persuasion by others who wanted to re-establish his "connection" to the firm while continuing to run it themselves (Transcript, vol. 69, p. 11,839).

On the contrary there was evidence that Mr. Stevens arranged financing for the takeover of two oil companies and that he dealt routinely with York Centre's major creditor, CIBC. As York Centre was an investment company, then expanding, his financing efforts were obviously critical. Not only did Mr. Stevens initiate and review "banking relationships" on isolated occasions, as he admitted, but also he routinely nurtured and developed them, closely monitored them, and was active in all the companies in the York Centre group. Four specific interventions with CIBC exemplify both his role with the bank and his general involvement in the York Centre group.

- Between February 3 and February 10, 1983, Mr. Stevens wrote letters to CIBC, and spoke by telephone and met with bank officials regarding the bank's loan to York Centre (and to Gill, Stevens Securities, and Cardiff Construction). The letters show his knowledge of and involvement in all sectors of the business. In the letters, Mr. Stevens advised the bank that there had been substantial reductions in the York Centre/Cardiff Construction loans and repayment of the Sentry share loan. He pointed to possible sources of repayment. Negotiations had been started, he wrote, with Capital Canada Limited and Barclays Bank Canada Limited to raise long-term money on the real estate assets; three scheduled sales of real estate would reduce the loans substantially; the company was entertaining bids on its Calgary property; and cash flow from rentals would assist the repayment (a cash flow statement was enclosed). Once York Centre sold Sentry to Invermere, Mr. Stevens wrote, cash would become available. He noted various lines of credit for Canalands, Sisman's, and Georgian Trust, and enclosed organization charts and financial statements for all the companies. He provided the following illuminating comment and rationale for the many intercompany transactions:

> Intercompany advances have been made in most instances to better control the borrowing activities of associated companies. We have considered it better to advance the funds rather than to give the borrowing authority to a subsidiary or associated company, and in so doing, to give at least the implied guarantee of the parent.
>
> (Exhibit 106, p. 211)

- On August 17, 1983, Mr. Stevens, Mr. Rowe, and Miss Walker met with Mr. Roland Wagg of CIBC and other bank officials. According to a bank memorandum, Hanil and Guaranty Trust financing offers were discussed and Mr. Stevens said he would re-evaluate the latter offer. Mr. Stevens was also reported in the memorandum to have stated that he was negotiating to sell a building in Calgary. He was further reported to have discussed York Centre's investments in Sisman's, Georgian Trust, and Canalands.

- On September 7, 1983, Mr. Stevens, Mr. Rowe, and Miss Walker met again with Mr. Wagg and another bank official. The conversation, according to Mr. Wagg, revolved around loan reductions through Guaranty Trust and Hanil financings, for which negotiations were then in progress. Mr. Stevens wished CIBC to postpone its security to that of Guaranty Trust. He also referred to his negotiations to sell a Calgary building. Bank officials suggested that some of the non-self-supporting real estate be sold, but Mr. Stevens rejected the suggestion and advised them that at this stage he wished to hold on to the assets.

- On June 5, 1984, Mr. Wagg and Mr. Miller of CIBC met Mr. Stevens and Mr. Rowe. Mr. Wagg testified that Mr. Stevens spoke for York Centre at the meeting. He said that Mr. Stevens undertook to speak directly to Guaranty Trust about a delay in receiving a second advance on its loan to Cardiff Construction, one of the matters to be resolved. He noted that the second advance was received from Guaranty Trust soon after the meeting. Mr. Wagg said Mr. Stevens agreed at the meeting that the sale of the companies' real estate was the only course of action open and assured the bank that this process would be expedited. Mr. Rowe wrote to the bank three days later outlining a number of proposals, among them a note that "Equion Securities Canada Limited . . . are interested in selling some or all of our real property" (Exhibit 108, p. 115). Other proposals contemplated financing oil exploration costs through pension funds, the transfer of York Centre's interests in Royal Cougar and Georgian Trust to a new financial services company, and the charging of management fees by York Centre to Canalands, Sentry, Gill, YCPL, and the financial services company. In my opinion it is reasonable to conclude that Mr. Stevens was at least aware of these proposals, having attended the meeting to address the concerns they were meant to deal with three days earlier.

Role in the Oil and Gas Companies

Mr. Stevens described himself as being aware and supportive of York Centre's investments in oil and gas, without being actively involved in the oil and gas companies themselves. This description, however, omitted his successful efforts on behalf of York Centre and Canalands to obtain financing from CIBC and the Continental Bank for the acquisition of Invermere Resources and Sentry; his involvement along with Mrs. Stevens in obtaining financing for Sentry from the U.S. bank Equibank; and his role in Canalands' 1983 share issue, including the use of Stevens Securities to complete it. As one might expect, Mr. Stevens' area of interest was money, not geology, and financing was thus the focus of his activity with the oil companies.

Specifics of Mr. Stevens' involvement with the oil companies included:

- In February 1982 Mr. Stevens purchased Invermere shares in order to gain control.
- In March 1982 Mr. Stevens applied to CIBC for a $3.3 million loan to York Centre to facilitate this takeover, which was granted.
- Also in 1982, Mr. Stevens was involved in the initial negotiation of Canalands Energy's loan from the Continental Bank for the acquisition of Invermere shares.
- In June 1982 Mr. Stevens applied to use $140,000 of the $3.3 million to buy Sentry shares. This was to be paid back in part from the proceeds of a $400,000 loan for Sentry he was negotiating with Equibank.
- In the spring of 1983 Mr. Stevens gave assurances to both CIBC and Continental Bank regarding these loans, caused York Centre and all the real estate companies to give a formal undertaking to reduce the

debt to be given by York to CIBC, and promised a complete paydown of the Canalands loan by June 30 if required.

Role in the Real Estate Companies

Mr. Stevens painted a similar picture of detachment with regard to his role in the real estate subsidiaries. He said he was kept abreast of events in the "real estate division" when he attended York Centre board meetings (Transcript, vol. 69, p. 11,843). Other evidence showed Mr. Stevens' awareness of and involvement with real estate matters to be extensive:

- In February 1983 Mr. Stevens wrote to the CIBC noting that negotiations for long-term financing using the real estate had been started and that various property sales were forthcoming.
- In March 1983 Mr. Stevens and Mr. Rowe met Mr. Denton of Hanil Bank. Among loans forthcoming after the meeting was a $1 million loan to Cardiff Construction.
- In April 1983 Mr. Stevens was involved in the signing of undertakings to CIBC to be signed by all the real estate companies.
- In May 1983 Mr. Stevens advised CIBC that, in a recent discussion, a life insurance company had expressed interest in providing conventional mortgage financing at preferred rates with equity participation.
- In the same month, Hanil sent Mr. Stevens a commitment letter for the $1 million loan to Cardiff Construction. Subsequently, over the summer of 1983, Mr. Stevens dealt with CIBC to arrange release of security over properties to enable them to be given as security to Hanil. He also dealt with CIBC's queries about the information that was provided by him, Mrs. Stevens, and Miss Walker regarding the number and value of properties to be released.
- In June 1983 Mr. Stevens attended an initial meeting with Mr. Stewart Carter of Guaranty Trust to arrange financing using certain of the properties owned by Cardiff Construction. In considering the loan, Guaranty Trust noted that Cardiff Construction's future growth "may be facilitated by 'participation financings' with mortgage lenders" (Exhibit 110, p. 16). Mr. Stevens received a first offer to finance from Guaranty Trust in June and sent back an altered conditional acceptance in July. In 1984, Mr. Stevens was also involved in obtaining a second advance of the Guaranty Trust loan.
- In June 1983 Mr. Stevens objected to CIBC's use of proceeds from the bridge financing of one property.
- In August and September 1983 Mr. Stevens, Mr. Rowe, and Miss Walker met twice with CIBC officials to discuss Cardiff Construction's Hanil and Guaranty Trust financings. He was reported to have

said that he was negotiating to sell a building, and to have rejected at the second meeting a bank suggestion that non-self-supporting real estate be sold.

- In June 1984, when York Centre was faced with an ultimatum from CIBC, Mr. Stevens and Mr. Rowe met with bank officials. As mentioned earlier, Mr. Wagg of CIBC testified that Mr. Stevens undertook to speak to Guaranty Trust about the delay in the second advance of its loan and agreed that the sale of the companies' real estate was the only course of action open, assuring the bank that the process would be expedited. Within a few days, Mr. Rowe wrote the bank that a firm had expressed interest in selling some or all of York Centre's real property. I have found that Mr. Stevens was aware of this too.
- Mr. Rowe testified that Mr. Stevens talked with him prior to his going into cabinet in September 1984 about efforts to arrange a participating mortgage or to sell the real estate. I note that this testimony is consistent with Mr. Rowe's letter to Mr. Stevens of September 30, 1984, referred to in Chapter 6, which mentions "a participating mortgage" (Exhibit 47).

Role in the Strip Bond Companies

Mr. Stevens confirmed he was one of the originators of the strip bond concept but testified that he had no involvement with YCPL or Royal Cougar, and that, although involved in an idea for financing Georgian Trust in 1982, he was not an officer or director of it. Other evidence was as follows:

- Mrs. Stevens testified that discussions between her and Mr. Stevens led to the incorporation of Georgian Trust in 1980.
- Mr. Fell of Dominion Securities and Mr. Lawrence of Burns Fry testified that Mr. Stevens approached their firms in the early 1980s about doing bond business with them.
- Ms. Bennett of Gordon Capital and Mr. Ron Graham, a minority shareholder of Royal Cougar, both of whom were involved with Royal Cougar in its formative stages, testified that Mr. Stevens was responsible for the formation of this company. Royal Cougar was incorporated late in 1982.
- Royal Cougar and Guaranty Trust formed a joint venture to market strip bond products called Cougars. In February 1983 Mr. Stevens advised CIBC by letter, in the context of an abortive plan to merge Gill and Stevens Securities, that the merged company could charge fees to Royal Cougar for his services in arranging this joint venture.
- In March 1983 Mr. Stevens and Mr. Rowe met Hanil Bank executive Arnold Denton to discuss strip bonds. Among loans forthcoming after

the meeting was a $1.5 million loan to YCPL, as agent for Georgian Trust, to finance the latter's strip bond portfolio. YCPL was activated to perform this role. Mr. Stevens later asked Mr. Lawrence of Burns Fry to give an opinion on the marketability of bonds to be given by YCPL as security for this loan, which he did.

- In June 1984, according to the memorandum below, Mr. Stevens instructed a Royal Cougar employee to purchase bonds for YCPL. The memorandum is from the employee, Ms. Viki Martin to Miss Walker. It states in part:

> SHIRLEY June 8, 1984
> Information Bulletin
>
> SMS instructed me to buy 47 x 25,000 (face value) of Residuals from Guaranty Trust 47 @ $1,874.00 (14% compounded annually) = $88,031.00
>
> Interior Trust has agreed to open a Margin Account in the name of York Centre Properties Limited. Conditions are 90%–10% and Prime + 1%.
>
> SMS is aware of these arrangements. . . .
>
> (Exhibit 97, p. 72)

- From 1982 to 1984, according to Mr. Tom Kierans of McLeod Young Weir, Mr. Stevens traded bonds from time to time in a margin account Georgian Equity had with this firm.

Conclusions

In his testimony, Mr. Stevens downplayed the extent of his activities in the companies. I have no doubt that his responsibilities as a member of Parliament occupied a significant portion of his time between 1980 and 1984 and that there were employees in the various companies to deal with administrative matters and the monitoring and analysis of investments.

Accordingly, so far as it goes, I regard Mr. Stevens' account as correct. Nonetheless, the testimony of others, together with information available from documents, makes it quite clear that although Mr. Stevens' contact during the period in question was irregular, he remained generally familiar with significant events as they occurred and continued to discharge an important responsibility in directing the affairs of the York Centre group of companies.

It is apparent from Mr. Rowe's letter of September 30, 1984 (set out in Chapter 6), and from the subsequent meeting, that the group sought specific advice and direction from Mr. Stevens, in circumstances in which it was obvious that Mr. Stevens had theretofore been actively involved, for addressing problems in all areas of investment. These problem areas were primarily, if not exclusively, financial. The communications on this occasion represent a plea for help and advice from a source upon which the group had obviously regularly relied.

In my opinion, the significance of Mr. Stevens' role in the establishment and maintenance of banking relationships was also minimized by him. It is clear that during the period of Mr. Stevens' greatest involvement with bankers, 1982–83, the group borrowed extensively to finance its affairs and thereafter faced straitened circumstances owing to its inability to meet its bankers' repayment expectations. As I noted earlier, management of the loans and the banking relationships was vital to the group, particularly as its financial situation deteriorated. It is clear that Mr. Stevens intervened whenever these relationships were seriously threatened and that his intimate knowledge of the affairs of all the companies was a matter of sufficient comfort to their bankers as to result in continuing relationships.

Mr. Stevens suggested that York Centre was being run by others while he was the chairman in the period 1981–83. I note first that York Centre was a holding company without independent activity other than supervision of its investments, few of which were revenue-producing in the period in question. When this assertion is considered in light of the testimony and documents, I have no hesitation concluding that Mr. Stevens was involved in the major activity of this company in this period, namely dealing with ongoing financing requirements that were essential for its survival.

Somewhat similar conclusions can be drawn about Mr. Stevens' statement that he was not active in Canalands or Sentry or their subsidiaries. The critical needs of these companies were the financing and monitoring of investments, both of which were ongoing. Mr. Stevens was the major decision maker in expanding the investments in the oil and gas field. He arranged the financing to carry this out. Although there were no doubt many activities in these companies with which he was not involved, the basic activity would not have been launched without his admitted concurrence — and the evidence points to a stronger role than that. His statement that he was not active in these companies does not tell the whole story.

Similarly, his comment that he was not actively involved with the operations of Cardiff Construction and its subsidiaries was tempered by the evidence of Mr. Carter and Mr. Denton that he broke the ground for loans to Cardiff Construction and by the documents from CIBC, Guaranty Trust, and Hanil Bank, in particular correspondence from him detailing how to dispose of real estate. No doubt the mechanics of these substantial transactions were carried out by others, but this is of little moment.

I have concluded that Mr. Stevens had both an economic and a controlling interest in Georgian Trust. He exercised his resultant influence in attempting to develop proposals that would fundamentally alter its ownership and activity in spite of the fact that he was not an officer of the company. Also noteworthy is his introductory role in arranging for the use of the company's bond portfolio to obtain financing through YCPL.

Regarding Georgian Equity, Mr. Stevens' testimony both suggested he had no involvement and minimized the significance of his office-holding by describing the company as quiescent. From Mrs. Stevens' testimony about the limits of Mr. Thrasher's activity, as well as the testimony of Mr. Kierans, my earlier finding that the company was managed in Canada, and the fact that Miss Walker, the only other officer, was Mr. Stevens' subordinate and believed him to be knowledgeable about the company, I conclude that in practical terms Mr. Stevens was the ultimate authority in this company.

Mr. Stevens denied any involvement in or connection with YCPL. This statement is incorrect. He was involved in the one transaction for which this company was reactivated. Further, I note that there was evidence of his subsequent involvement with YCPL, in the form of a direction to purchase bonds, although he held no office in the company.

I find therefore that Mr. Stevens was involved with all the York Centre group of companies between 1980 and 1984. Although, no doubt, not constantly involved in the companies on a hands-on basis, he directed their significant activities, he enjoyed a level of knowledge about their overall activities that one would expect from a person whose net worth was closely tied to their fate, and he took the lead in all significant activities in which they participated. These activities continued to the point of his entering the cabinet.

Chapter 8

Compliance with the Guidelines, Code, and Letter

Upon entering the cabinet, Mr. Stevens was obliged to comply with the conflict of interest rules contained in the guidelines, and later in the code and letter. This chapter describes the steps that Mr. Stevens took to comply with these requirements.

The Guidelines

On September 17, 1984, the day of Mr. Stevens' appointment as minister, Mr. Robert Boyle, the assistant deputy registrar general (ADRG), wrote to him enclosing a copy of the guidelines and advising him that certain procedures needed to be carried out, including his own confidential disclosure and the designation of those members of his staff who were to be subject to the guidelines. Mr. Boyle then assigned Mr. Peter Herbert of his office to assist Mr. Stevens with his compliance. Mr. Herbert had dealt with Mr. Stevens' compliance measures in 1979 and was familiar with the Stevens' affairs.

Mr. Stevens delegated the task of dealing with the ADRG's office to Miss Walker and the law firm of Stikeman, Elliott, as he had done in 1979. Mrs. Stevens was involved briefly as well. A few days after Mr. Stevens' appointment, she wrote to Mr. H.N.R. Jackman of the National Victoria and Grey Trust Company (National Trust) asking that the company become trustee of the blind trust.

Mr. Herbert began by referring to the confidential file he had prepared in 1979. This file included financial statements for Gill, Mr. and Mrs. Stevens' blind trust, correspondence from Miss Walker and others, notes of his meeting with Mr. Stevens at that time, and other material on the Stevens' interests gathered by him. He also checked the *Financial Post*'s survey of directors to up-date his knowledge of Mr. Stevens' affairs.

On October 11, 1984, having received no reply to the ADRG's letter of September 17, Mr. Herbert telephoned Mr. Stevens' office. The next day Mr. Herbert was advised that Mr. Frederick von Veh of Stikeman, Elliott would be handling Mr. Stevens' affairs and that Miss Effie Triantafilopoulos, Mr. Stevens' chief of staff, would be designating those members of his exempt staff who were to comply with the guidelines.

On October 18, 1984, Mr. Herbert contacted Mr. von Veh, who later advised him that Mr. Richard Clark of Stikeman, Elliott was also involved. On October 24, 1984, Mr. Herbert received a telephone call from Miss Walker. Mr. Herbert mentioned to her that he had had difficulty in reaching either Mr. Stevens or Miss Triantafilopoulos, and Miss Walker expressed surprise that Mr. Herbert had not been directed to talk to her. He met with Miss Walker later that day and discussed with her the intent and main requirements of the guidelines. She advised him that Mr. Stevens had resigned several positions well before being sworn in, that she would do all she could to ensure Mr. Stevens' compliance, and that exempt staff who would be subject to the guidelines were designated.

At some point before October 30, 1984, Mr. Herbert received a statement of net worth dated September 30, 1984, as part of Mr. Stevens' confidential disclosure. On October 28, 1984, Mr. Clark sent Mr. Herbert an unsigned copy of the blind trust document. A signed copy was later sent to Mr. Herbert. Mr. Stevens had executed the blind trust on October 19, 1984. Mr. Stevens transferred the ownership of the following controlled assets to the trustee: 81 common and 20,500 preference shares of Gill, held by him, and 13,800 York Centre shares and $549.03 held by an RRSP of which he was the beneficiary. The trust document itself is reproduced in Appendix I.

Mr. Stevens testified that he had instructed Miss Walker to make sure that any data or information relevant to what should or should not go into a blind trust was made available, and that there were discussions with the ADRG as to what the ADRG wished done, given Mr. Stevens' various assets — for example, whether they should be treated as exempt, discloseable, or controlled. He had formed the preliminary view that a blind trust "appeared to be the answer" for the controlled assets (Transcript, vol. 71, p. 12,270).

Mr. Stevens testified that he had asked Miss Walker to get in touch with Mr. Clark to make sure that things were done in what Mr. Clark felt was an appropriate legal fashion. Mr. Clark worked, he said, from factual data provided by him and Miss Walker. Mr. Stevens also testified that he had had discussions with both Mr. Clark and Mr. von Veh, in the course of which he reviewed some typical blind trusts. Recent quarterly financial statements of York Centre and various subsidiaries or affiliates were made available to them, but, beyond that, Mr. Stevens could not recall discussing York Centre's financial condition.

By October 30, 1984, Mr. Herbert had received the executed trust document, the statement of net worth, and draft disclosure statements, and had spoken with both Mr. Clark and Miss Walker. That day, he discussed the draft material with Miss Walker, who assured him that the disclosure of activities was a "complete disclosure of all activities which require a declaration" and that Mr. Stevens had no disclosure with regard to gifts or other benefits to make (Exhibit 8, tab 1, p. 19).

Mr. Herbert did not recall having made any specific inquiries about Mrs. Stevens. He testified, however, that he did "recall very distinctly having referred to the need for a spouse to take care not to embarrass her husband" during discussions with "people from Stikeman, Elliott and . . . Ms. Walker" (Transcript, vol. 3, p. 318). He said that he asked the advisers for an assurance that there was no problem regarding her involvements which might affect Mr. Stevens, and that he received assurances from one or both of them, but certainly from Miss Walker, that Mrs. Stevens did not have any activities or assets which might pose any problem for Mr. Stevens vis-à-vis the guidelines.

On October 30, 1984, Mr. Herbert drafted a summary letter that was delivered to Mr. Stevens, advising him of the information he had gleaned from Miss Walker and Mr. Clark. In the letter Mr. Herbert asked Mr. Stevens, "[p]articularly since it has not yet been possible to meet with you personally," to "look over this letter carefully" and to sign and return an additional copy "[i]f you find the information I have set down is accurate and sufficiently complete" (Exhibit 8, tab 1, p. 20). Mr. Stevens signed and returned the letter and its enclosed disclosure documents without alteration the next day.

The letter included the following representations:

- Miss Walker had confirmed that the information in the draft "Disclosure of Activities" enclosed with the letter (the same as the one Mr. Stevens signed) "represents a complete disclosure of all activities which require a declaration" (Exhibit 8, tab 1, p. 19).
- The assets of the Anna B. Stevens estate consisted solely of Government of Canada bonds.
- His wife Noreen had no activities or assets which might pose any problem for him vis-à-vis the guidelines.

I note that, contrary to the second representation, the Anna B. Stevens estate, discussed in Chapter 5, owned a majority of the issued shares of Stevens Securities. Regarding the third representation, in effect a statement that Mr. Stevens had discharged his duty under Part VII of the guidelines, the only background for this was, apparently, a discussion Mr. and Mrs. Stevens had had to the effect that she would not represent in her practice anyone having dealings with the government.

The letter also reiterated Mr. Herbert's wish to meet with Mr. Stevens and his offer to assist him with any questions concerning the guidelines or conflict of interest. Mr. Herbert testified that he did not meet with Mr. Stevens in 1984, although he had attempted to, and that in the circumstances it appeared unnecessary. He said he was satisfied from information and documentation provided by others that Mr. Stevens had complied with and was fully aware of the guidelines. Mr. Stevens testified that he was unaware that the ADRG's office wished to meet him, but he did recall discussing compliance with Mr. Clark and Miss Walker. He said he would have met with the ADRG had Mr. Clark or anyone else expressed concern.

On receipt of the signed letter, the ADRG wrote to Mr. Stevens on November 1, 1984, advising him that Mr. Herbert had confirmed to the ADRG his compliance with the guidelines and that the ADRG would be recommending that the prime minister approve Mr. Stevens' compliance measures. This formal approval was sent to Mr. Stevens on January 15, 1985.

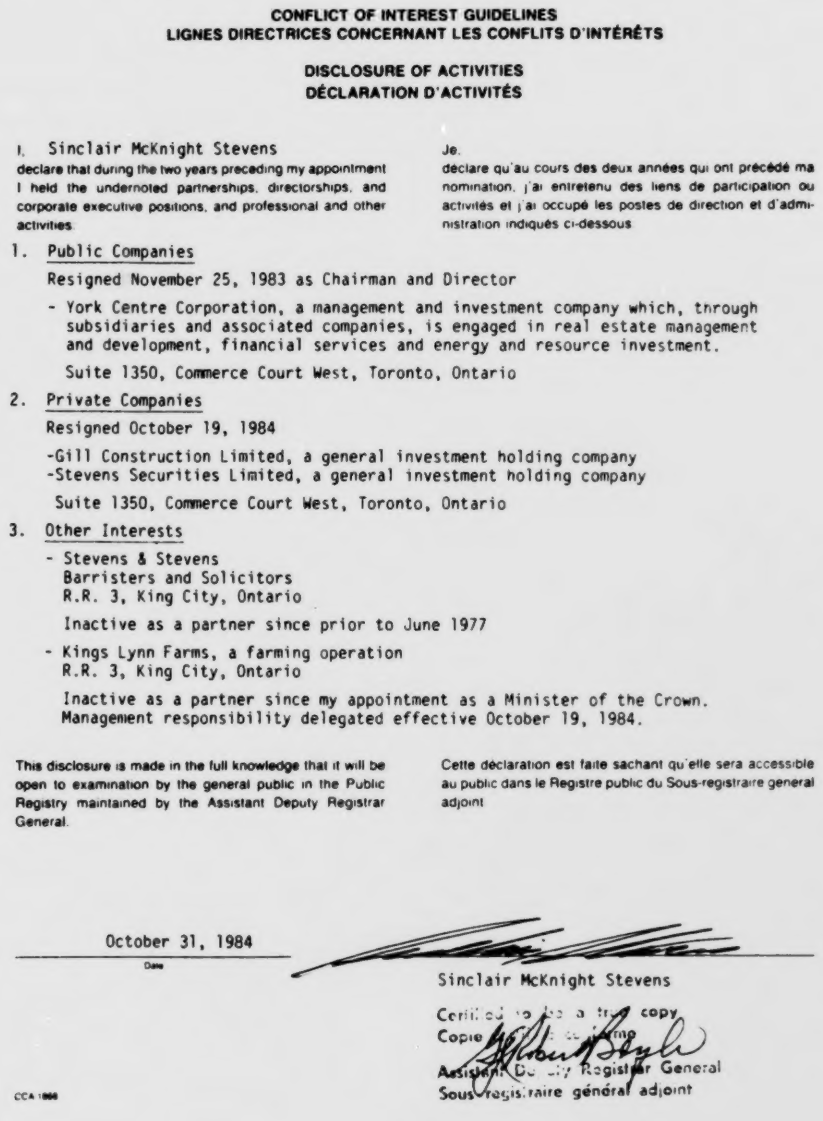
Mr. Stevens' public disclosure of his activities and assets in the registry held by the ADRG is set out in figures 8.1 and 8.2.

The Code and Letter

The code came into force on January 1, 1986. Early in December 1985 the ADRG wrote two letters to Mr. Stevens regarding the code and letter. The first, dated December 5, 1985, enclosed a copy of the code and described the responsibilities it imposed upon Mr. Stevens and the ADRG. The ADRG advised him that a separate letter would deal with his personal affairs and would detail the additional information required by the code to determine the appropriate compliance methods. Also mentioned were the prime minister's directives in the letter regarding preferential treatment and grants to or contracts with, among others, spouses.

The second letter from the ADRG, dated December 12, 1985, noted that the requirements for ministers had "scarcely changed" from the guidelines (Exhibit 8, tab 1, p. 58). It advised Mr. Stevens that certain things were required; namely, confidential disclosure (1) of any changes to assets or liabilities disclosed in a previous report or any annual update; (2) of all activities — commercial, government, philanthropic, charitable, or non-commercial — within the preceding two years; and (3) of gifts, hospitality, or other benefits over $200 in value received from someone other than a family member or close friend. It was pointed out that on receipt of this information the ADRG would advise Mr. Stevens as to what compliance methods were appropriate. The letter further noted that, although it was no longer necessary to provide detailed information on exempt assets, it would still be prudent for Mr. Stevens to disclose any asset that could give rise to a real or potential conflict of interest. Once the appropriate compliance methods were determined, the letter noted, the ADRG would prepare any necessary public filings based on the information provided by Mr. Stevens. The ADRG also wrote that he wished "to emphasize that the Code includes special requirements regarding . . . hiring of or contracting with family members" (Exhibit 8, tab 1, p. 59). There was evidence from Mr. Stevens that he may have discussed with his wife the fact that the code did not have new provisions regarding, or applying to, spouses.

Figure 8.1 Mr. Stevens' Disclosure of Activities



CONFLICT OF INTEREST GUIDELINES
LIGNES DIRECTRICES CONCERNANT LES CONFLITS D'INTÉRÊTS

DISCLOSURE OF ACTIVITIES
DÉCLARATION D'ACTIVITÉS

I, Sinclair McKnight Stevens
declare that during the two years preceding my appointment I held the undernoted partnerships, directorships, and corporate executive positions, and professional and other activities.

Je,
déclare qu'au cours des deux années qui ont précédé ma nomination, j'ai entretenu des liens de participation ou activités et j'ai occupé les postes de direction et d'administration indiqués ci-dessous.

1. Public Companies

   Resigned November 25, 1983 as Chairman and Director

   - York Centre Corporation, a management and investment company which, through subsidiaries and associated companies, is engaged in real estate management and development, financial services and energy and resource investment.

   Suite 1350, Commerce Court West, Toronto, Ontario

2. Private Companies

   Resigned October 19, 1984

   -Gill Construction Limited, a general investment holding company
   -Stevens Securities Limited, a general investment holding company

   Suite 1350, Commerce Court West, Toronto, Ontario

3. Other Interests

   - Stevens & Stevens
     Barristers and Solicitors
     R.R. 3, King City, Ontario

     Inactive as a partner since prior to June 1977

   - Kings Lynn Farms, a farming operation
     R.R. 3, King City, Ontario

     Inactive as a partner since my appointment as a Minister of the Crown.
     Management responsibility delegated effective October 19, 1984.

This disclosure is made in the full knowledge that it will be open to examination by the general public in the Public Registry maintained by the Assistant Deputy Registrar General.

Cette déclaration est faite sachant qu'elle sera accessible au public dans le Registre public du Sous-registraire général adjoint.

October 31, 1984
Date

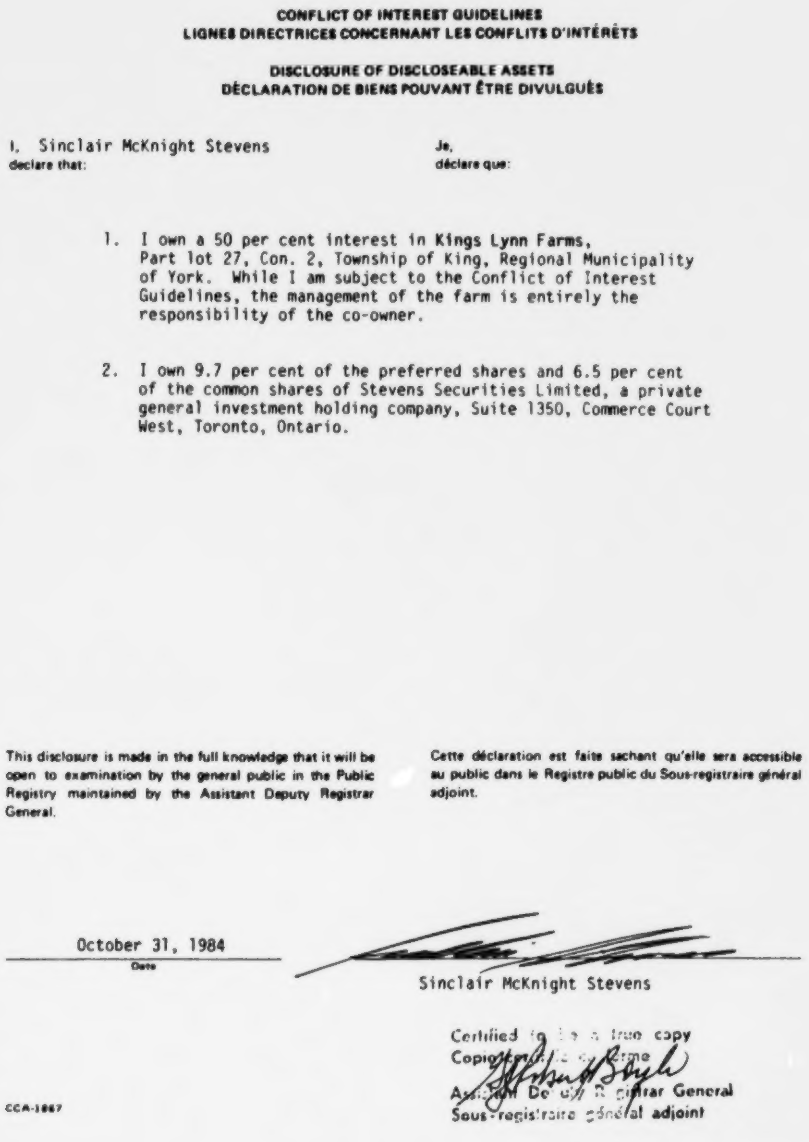
Sinclair McKnight Stevens

Certified to be a true copy
Copie certifiée conforme
Assistant Deputy Registrar General
Sous-registraire général adjoint

CCA [illegible]

Source: Exhibit 8, p. 25

Figure 8.2 Mr. Stevens' Disclosure of Discloseable Assets



CONFLICT OF INTEREST GUIDELINES
LIGNES DIRECTRICES CONCERNANT LES CONFLITS D'INTÉRÊTS

DISCLOSURE OF DISCLOSEABLE ASSETS
DÉCLARATION DE BIENS POUVANT ÊTRE DIVULGUÉS

I, Sinclair McKnight Stevens — Je,
declare that: — déclare que:

1. I own a 50 per cent interest in Kings Lynn Farms, Part lot 27, Con. 2, Township of King, Regional Municipality of York. While I am subject to the Conflict of Interest Guidelines, the management of the farm is entirely the responsibility of the co-owner.

2. I own 9.7 per cent of the preferred shares and 6.5 per cent of the common shares of Stevens Securities Limited, a private general investment holding company, Suite 1350, Commerce Court West, Toronto, Ontario.

This disclosure is made in the full knowledge that it will be open to examination by the general public in the Public Registry maintained by the Assistant Deputy Registrar General.

Cette déclaration est faite sachant qu'elle sera accessible au public dans le Registre public du Sous-registraire général adjoint.

October 31, 1984
Date

Sinclair McKnight Stevens

Certified to be a true copy
Copie certifiée conforme
Assistant Deputy Registrar General
Sous-registraire général adjoint

CCA-1867

Source: Exhibit 8, p. 26

The next apparent contact between the ADRG's office and Mr. Stevens was on February 4, 1986, when Mr. Herbert called Miss Walker at the York Centre offices and left a message. Later that day she called back and assured him there were "No changes whatsoever" to be reported (Exhibit 8, tab 1, p. 61). (I will deal later in this section with how Miss Walker came to make this statement.) On February 20, 1986, Mr. Herbert wrote to Miss Walker care of the box number of the York Centre offices, where he had been in the habit of writing and telephoning her, enclosing drafts of the necessary public filings for Mr. Stevens' consideration. In essence, these were exactly the same as the 1984 documents. Mr. Herbert also enclosed blank forms in case any changes were necessary.

By April 9, 1986, Mr. Stevens had signed the documents and the ADRG's office had received them. On April 11, 1986, the ADRG wrote to Mr. Stevens advising that the necessary information had been assembled for his confidential report, that his public documents were satisfactory, and that the ADRG would be recommending that the prime minister approve Mr. Stevens' compliance methods.

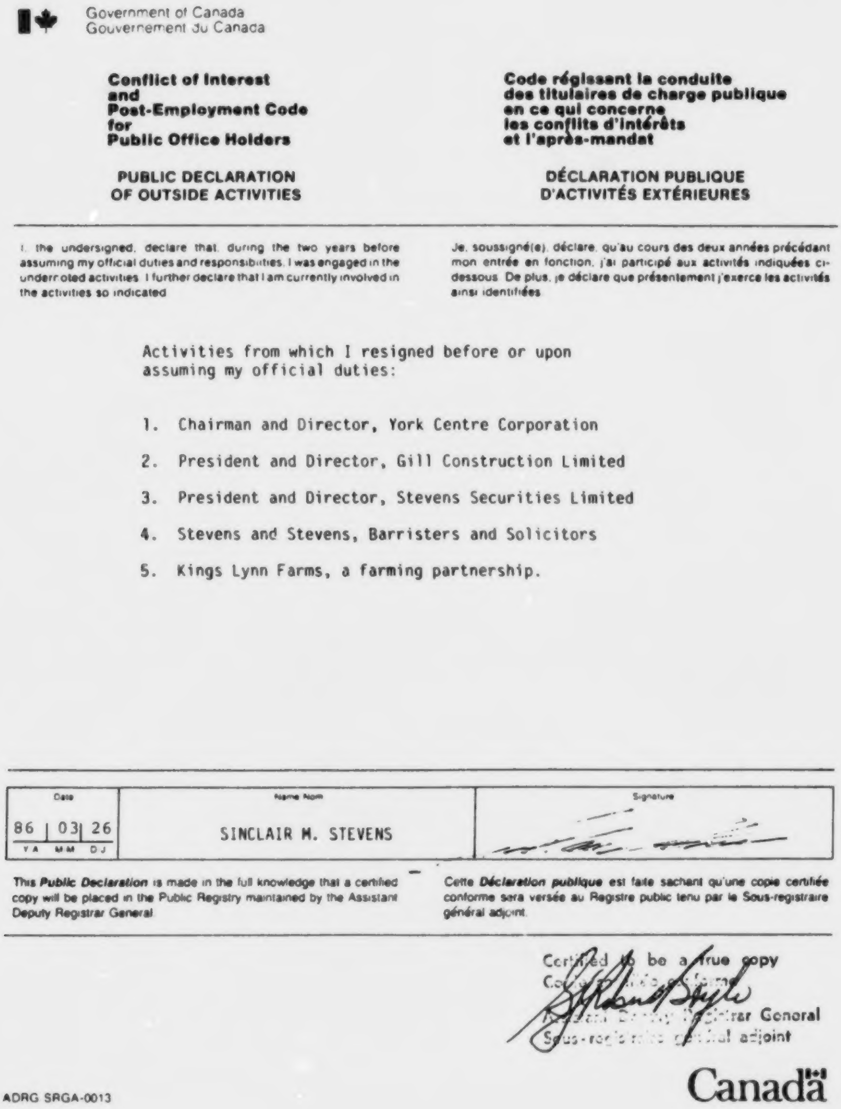
Mr. Stevens' public disclosures of his activities and assets are set out in figures 8.3 and 8.4. As part of his compliance, Mr. Stevens also certified that he had read and understood the code, agreed to observe it as a condition of holding office, and had complied with the conflict of interest measures set out in Part II of the code.

As mentioned earlier, there was some question from the testimony as to how Miss Walker came to advise Mr. Herbert that there were no changes to report. Miss Walker testified that she made the statement based on her assumption that there were no changes. She had not asked Mr. or Mrs. Stevens if there were any changes or, for that matter, made any inquiries.

At various points in his testimony, Mr. Stevens stated that Miss Walker had not been delegated the responsibility to communicate with the ADRG and that he could not recall giving her any specific authority or instruction to make this statement. However, he also testified that he had had discussions with Miss Walker about compliance and with Mr. Clark and Mr. von Veh about whether the code required any changes; that Miss Walker had been instructed to make the statement that there were no changes to report; and that he had turned over compliance with the code to Miss Walker and to Stikeman, Elliott. The evidence of Miss Walker and Mr. Herbert indicated no involvement by Stikeman, Elliott whatsoever.

I conclude that Mr. Stevens did in fact delegate communication with the ADRG to Miss Walker. She clearly took charge of the matter with his knowledge and without any objection from him. After that, one of two things happened. Either Mr. Stevens and Miss Walker communicated further about the matter and, based upon this communication, she concluded that she should tell the ADRG there were no changes to report; or they did not communicate, and he left the matter of what to advise the ADRG entirely to her.

Figure 8.3 Mr. Stevens' Public Declaration of Outside Activities



Government of Canada
Gouvernement du Canada

Conflict of Interest
and
Post-Employment Code
for
Public Office Holders

Code régissant la conduite
des titulaires de charge publique
en ce qui concerne
les conflits d'intérêts
et l'après-mandat

PUBLIC DECLARATION
OF OUTSIDE ACTIVITIES

DÉCLARATION PUBLIQUE
D'ACTIVITÉS EXTÉRIEURES

I, the undersigned, declare that, during the two years before assuming my official duties and responsibilities, I was engaged in the undernoted activities. I further declare that I am currently involved in the activities so indicated.

Je, soussigné(e), déclare, qu'au cours des deux années précédant mon entrée en fonction, j'ai participé aux activités indiquées ci-dessous. De plus, je déclare que présentement j'exerce les activités ainsi identifiées.

Activities from which I resigned before or upon
assuming my official duties:

1. Chairman and Director, York Centre Corporation
2. President and Director, Gill Construction Limited
3. President and Director, Stevens Securities Limited
4. Stevens and Stevens, Barristers and Solicitors
5. Kings Lynn Farms, a farming partnership.

Date	Name Nom	Signature
86 | 03 | 26 YA MM DJ	SINCLAIR M. STEVENS	

This *Public Declaration* is made in the full knowledge that a certified copy will be placed in the Public Registry maintained by the Assistant Deputy Registrar General.

Cette *Déclaration publique* est faite sachant qu'une copie certifiée conforme sera versée au Registre public tenu par le Sous-registraire général adjoint.

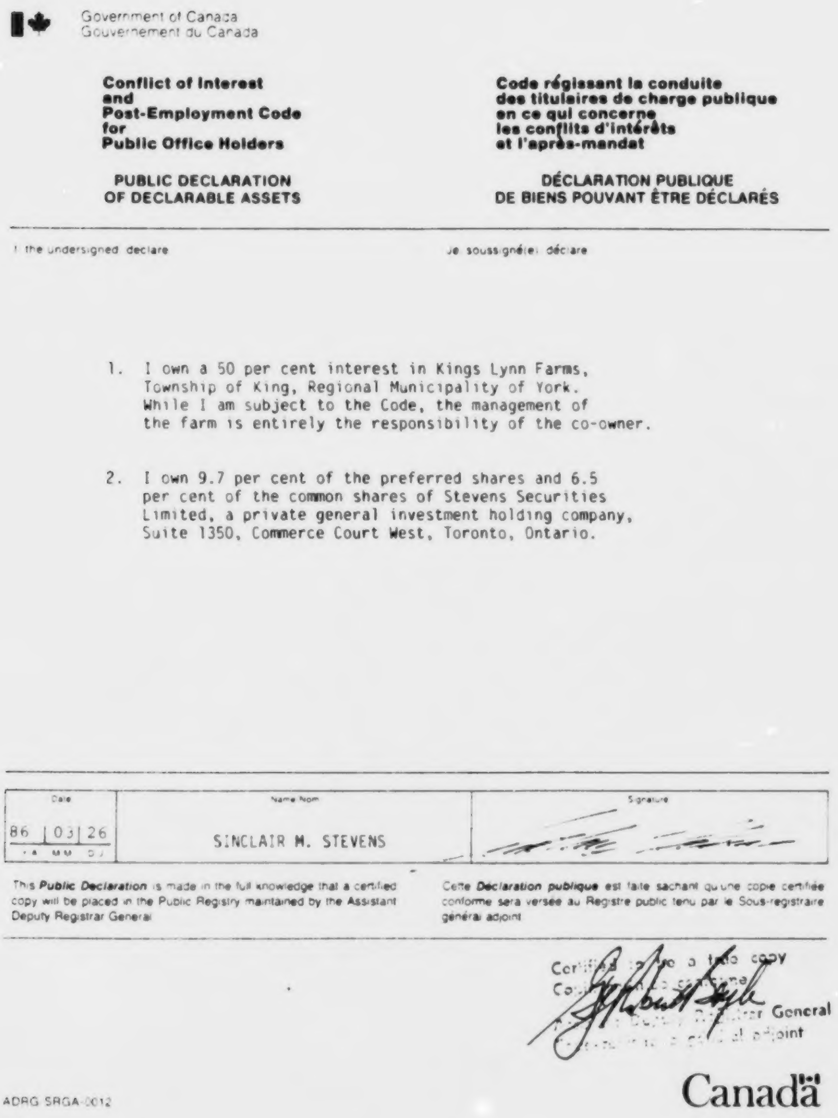
Certified to be a true copy
Copie certifiée conforme
Assistant Deputy Registrar General
Sous-registraire général adjoint

ADRG SRGA-0013

Canada

Source: Exhibit 8, p. 68

Figure 8.4 Mr. Stevens' Public Declaration of Declarable Assets



Government of Canada
Gouvernement du Canada

Conflict of Interest and Post-Employment Code for Public Office Holders	**Code régissant la conduite des titulaires de charge publique en ce qui concerne les conflits d'intérêts et l'après-mandat**
PUBLIC DECLARATION OF DECLARABLE ASSETS	**DÉCLARATION PUBLIQUE DE BIENS POUVANT ÊTRE DÉCLARÉS**

I the undersigned declare — Je soussigné(e) déclare

1. I own a 50 per cent interest in Kings Lynn Farms, Township of King, Regional Municipality of York. While I am subject to the Code, the management of the farm is entirely the responsibility of the co-owner.

2. I own 9.7 per cent of the preferred shares and 6.5 per cent of the common shares of Stevens Securities Limited, a private general investment holding company, Suite 1350, Commerce Court West, Toronto, Ontario.

Date	Name Nom	Signature
86 | 03 | 26 YA MM DJ	SINCLAIR M. STEVENS	

This *Public Declaration* is made in the full knowledge that a certified copy will be placed in the Public Registry maintained by the Assistant Deputy Registrar General

Cette *Déclaration publique* est faite sachant qu'une copie certifiée conforme sera versée au Registre public tenu par le Sous-registraire général adjoint

Certified to be a true copy
Copie certifiée conforme
Assistant Deputy Registrar General
Sous-registraire général adjoint

ADRG SRGA-0012

Canada

Source: Exhibit 8, p. 69

Summary

In both 1984 and 1986 Mr. Stevens delegated compliance matters and discussion with the ADRG to others. In 1984 Miss Walker and the firm of Stikeman, Elliott both discussed Mr. Stevens' affairs with the ADRG and finalized the compliance arrangements; in 1986 these functions were handled entirely by Miss Walker. In 1984 Mr. Stevens had had discussions with both Miss Walker and the Stikeman, Elliott lawyers; in 1986 there was no evidence apart from Mr. Stevens' of any such discussions.

Upon being presented with the necessary forms, Mr. Stevens signed them. There was evidence that Mr. Stevens had some form of discussion with his wife in 1984 about her not representing persons having dealings with the government, and that he may have had some discussions with her, in 1986, to the effect that the code did not have new provisions regarding, or applying to, spouses. There was no evidence that Mr. Stevens discussed Miss Walker's compliance responsibilities with her. This was delegated, he said, to Miss Triantafilopoulos.

Part Three

Mr. Stevens' Involvement in Private Business Matters while a Minister of the Crown

In Part Two I summarized the evidence relating to Mr. Stevens' business interests and his involvement in the York Centre group of companies prior to his appointment as minister in September 1984 and his formal compliance with the conflict of interest regimes on entering office and thereafter. In this part I examine the nature and the extent of his involvement in private matters while he was a cabinet minister. I first consider the evidence relating to Mr. Stevens himself. I then consider the roles that Miss Walker and Mrs. Stevens played in these same business areas, and their involvement, if any, with Mr. Stevens. With this background I assess the nature and extent of Mr. Stevens' knowledge of or involvement in private business matters while he was a minister. I then turn to the allegations of conflict of interest in Part Four. First, however, let me set out the evidence relating to Mr. Stevens' involvement in private business matters.

The Commission heard evidence that Mr. Stevens continued his involvement in the affairs of the York Centre group of companies even after becoming a minister of the Crown. The evidence related in particular to the following events:

- meetings with Mr. Mel Leiderman, the York Centre accountant, on March 16, 1985, and April 13, 1986;
- meetings and conversations regarding the La Ronge goldplay;
- involvement in the Christ coin proposal and discussions with Chase Manhattan Bank officials;
- a meeting with Mr. Angus Dunn of Morgan Grenfell & Co. Ltd. (Morgan Grenfell) in March 1985;
- an approach to Mr. Tom Kierans of McLeod Young Weir on July 31, 1985;
- a telephone call to Mr. Ken Leung of Olympia & York in August 1985;
- certain financial documents pertaining to the York Centre group of companies found in files and elsewhere in the minister's Ottawa office; and

- a meeting with Mr. Ron Graham on May 2, 1986.

Some of these incidents also relate to the allegation that Mr. Stevens improperly mingled private business with government business. The "mingling" aspect of these incidents will be examined in more detail in Chapter 23. My concern here is to deal with this evidence, at least in part, to allow a proper assessment of the nature and extent of Mr. Stevens' involvement with the York Centre group of companies while he was a minister of the Crown.

Chapter 9

The Meetings with Mel Leiderman

Mr. Mel Leiderman is a chartered accountant and a partner in the firm of Lipton, Wiseman, Altbaum & Partners. Mr. Leiderman has been the accountant and auditor for most of the York Centre companies since 1979. He has come to know Mr. and Mrs. Stevens, Ted Rowe, Shirley Walker, and the other officers and personnel at York Centre and has worked with them in a number of areas. Mr. Leiderman has not only performed general accounting and auditing services but on numerous occasions has also provided tax advice, financial consulting, and general business assistance.

For example, both in the fall of 1984 and in the spring and summer of 1985, when York Centre was attempting to raise money on Bay Street, Mr. Leiderman accompanied Noreen Stevens or Ted Rowe to meetings held with Richardson Greenshields, Hees, and Gordon Capital. He was familiar with the financial condition of the York Centre companies and some of the financing strategies that were being pursued.

Mr. Leiderman testified that he had private dealings with Mr. Stevens, by telephone and in person, while Mr. Stevens was a minister of the Crown. He said that he had "a couple" of telephone conversations with Mr. Stevens between October 1984 and May 1986. Although unable to pinpoint the date more precisely, Mr. Leiderman recalled that Mr. Stevens called him and they "discussed the financial affairs of Georgian Trust" and, in particular, the draft financial statements of the company (Transcript, vol. 15, pp. 2155, 2154).

Mr. Leiderman also testified that on two occasions he met with Mr. and Mrs. Stevens while Mr. Stevens was minister. The first meeting was on March 16, 1985, and the second on April 13, 1986. Both were weekend meetings that were held at the Stevens farm near King City. Each meeting lasted approximately two to three hours, and only Sinclair and Noreen Stevens were present. On each occasion Mr. Leiderman made contemporaneous notes of what was being discussed. He produced to the Commission four pages of notes from the first meeting and one page from the second.

Mr. Leiderman's evidence on what was discussed at these meetings is particularly important in assessing the extent to which Mr. Stevens was involved in private business matters while he was a minister of the

Crown. It also provides an important basis against which to measure other incidents and other evidence. I shall deal with each of the meetings in turn.

Meeting of March 16, 1985

Mr. Leiderman's Testimony and Notes

On Saturday, March 16, 1985, Mr. Leiderman met with Mr. and Mrs. Stevens at their farm for two to three hours. According to Mr. Leiderman, the financial condition of York Centre at this time was such that it would have had difficulty meeting its obligations unless the operation became profitable or additional equity was raised. The "thrust of the discussion" at this meeting was a proposed reorganization of the York Centre group of companies in order to raise "additional equity or capital or cash" (Transcript, vol. 15, pp. 2188, 2169). According to Mr. Leiderman's evidence, one of the reasons for the proposed reorganization was the "need for money" (Transcript, vol. 15, p. 2188).

I have already described the financial condition of the York Centre companies in Chapter 6, and it is sufficient to say here that in March 1985 there was an urgent need to obtain additional financing. Indeed, it was at this point that the approaches to Burns Fry and Dominion Securities were proving unsuccessful and an approach was being made to Gordon Capital. The "need for money" and the way that the money could be raised was discussed in some detail at the March 16 meeting.

According to the evidence of Mr. Leiderman and the notes that he made as the meeting progressed, the need to raise between $3 million and $5 million was discussed. If $3 million were raised, the amount would be distributed as follows: $1.5 million would go to York Centre, $1.2 million to the Hanil Bank, and $0.3 million to Equibank.

Mr. Leiderman's testimony and notes indicate that certain property valuations and bond holdings were also discussed. The appraised value of the "H of K land" was noted as $300,000 (Exhibit 97, p. 192). This was the valuation of the Highlands of King property in Barrie, Ontario, that shortly thereafter was included in the mortgage agreement Mrs. Stevens entered into with Mr. Anton Czapka. There was also a notation about Georgian Trust and the "B.C. bonds, profit or loss on sale" (Exhibit 97, p. 192). The B.C. Hydro bonds held by Georgian Trust had been sold about two weeks earlier, on February 28, 1985.

There was discussion of a possible use of redeemable preference shares financed by strip bond securities ("Cougars") as a vehicle to raise the $3 million (Exhibit 97, p. 191). According to Mr. Leiderman this was another "scenario as to a proposed refinancing" (Transcript, vol. 15, p. 2182). There was also discussion of using Georgian International Corporation, a shell company incorporated in the United Kingdom, as another possible vehicle to raise money.

Mr. Leiderman testified that both Mr. and Mrs. Stevens appeared knowledgeable about the financial condition of the companies at the time of the meeting and about the need to raise money. Mr. Leiderman also testified that although Mrs. Stevens contributed to the discussions, Mr. Stevens was the main source of the ideas generated at this meeting.

Several days after the meeting, Mr. Leiderman prepared a "proposed reorganization" chart dated March 21, 1985. The chart was based on the notes he had taken during the meeting. In his testimony, Mr. Leiderman could not recall whether he delivered the chart to either Mr. or Mrs. Stevens. Nor could he recall having any further meetings or discussions in this regard with either of them.

Mr. and Mrs. Stevens' Evidence

Mr. Stevens testified that he was present at the meeting as a "resource person," to provide background and commentary. According to Mr. Stevens, this meeting was simply a "meeting of . . . professionals" (Transcript, vol. 70, p. 11,997). Because it had nothing to do with the day-to-day activities of the York Centre group of companies, "operational people" such as Ted Rowe or Bill Mollard were not present (Transcript, vol. 73, p. 12,593).

Mr. Stevens conceded that the need to raise money could have been discussed but testified that this would have been in the context of trying to effect a sensible reorganization. When questioned about Mr. Leiderman's evidence and the items in Mr. Leiderman's notes that pertained to the financial discussions — the need to raise $3–$5 million, how the proceeds would be distributed, the Highlands of King property, the B.C. Hydro bonds, the use of Georgian International Corporation — Mr. Stevens testified that he could not recall discussing any of these matters.

Mr. Stevens testified that after the meeting concluded and Mr. Leiderman had left, he and his wife discussed matters further but in a general way only, and that thereafter they had no additional discussions about the meeting. Mr. Stevens also testified that he did not discuss with his wife, on that day or thereafter, the raising of $3–$5 million; that he did not discuss it with Mr. Ted Rowe; and that he did not ever ask Mrs. Stevens or Mr. Rowe how the financing efforts were progressing or whether money was in fact being raised. Mr. Stevens testified that he was not interested in the financing efforts or concerned about them.

Mrs. Stevens testified that in her view the items discussed at the March 16, 1985, meeting had nothing to do with the "management" of York Centre.

Conclusions

I accept the evidence of Mr. Leiderman. I was impressed by his careful testimony. Mr. Leiderman testified in circumstances that were undoubtedly difficult for him as the York Centre accountant, yet he answered all the questions put to him, directly and candidly. His testimony was forthright and credible, and he attempted in good faith to recall the discussions of March 16, 1985, from the notes he made on that day as the meeting progressed.

I find as a fact that corporate reorganization and "the need for money," and in particular the need to raise $3–$5 million, were discussed by Mr. and Mrs. Stevens at the March 16 meeting. Indeed, I find that all the items noted by Mr. Leiderman and described above were matters discussed during the meeting.

I further find that the matters discussed that day were matters that related to the current financial condition of the York Centre group of companies and the urgent need for refinancing, to current property and bond values, and to proposals relating to corporate reorganization. All of these are typically "management" concerns. I reject Mr. Stevens' characterization of the meeting as simply a "meeting of professionals." It was more than that. I find that management matters relating to the York Centre group of companies were discussed by Mr. and Mrs. Stevens at this meeting with Mr. Leiderman.

Meeting of April 13, 1986

Mr. Leiderman's Evidence

Mr. Leiderman met with Mr. and Mrs. Stevens again on Sunday, April 13, 1986. The meeting was arranged by Miss Walker, who had telephoned Mr. Leiderman and asked him to attend at the Stevens farm on the Sunday afternoon. Mr. Leiderman brought to the meeting some current financial statements and some correspondence files relating to the York Centre group of companies. He also brought a spreadsheet that had been prepared by Joan Foulkes, the York Centre bookkeeper. The spreadsheet showed the intercompany balances as of December 31, 1985.

The meeting with Mr. and Mrs. Stevens lasted approximately two-and-a-half to three hours. Mr. Leiderman again made notes of what was being discussed.

The purpose of the meeting was to discuss ways to "clean-up" the balance sheets of the various York Centre companies by eliminating intercompany loans through the exchange of debt for equity. The discussions centred primarily on the spreadsheet. The spreadsheet listed the intercompany balances, as of December 31, 1985, of the following companies: York Centre, Cardiff, Clady Farm, Canalands, YCPL, Stevens Securities, Georgian Trust, Georgian Equity, Gill, and Sentry. Of the ten companies named, three were public companies (York Centre, Canalands, and Sentry). The others were private or offshore companies.

According to this spreadsheet, the "intercompany balances" in the York Centre companies, as of December 31, 1985, were as follows:

- Stevens Securities owed Canalands $387,500;
- Canalands owed York Centre $598,782;
- York Centre owed Stevens Securities $541,250;
- Cardiff owed Gill $6,000;
- York Centre owed Gill $130,600;
- Clady Farm owed Cardiff $805,316;
- York Centre owed Georgian Trust $729,217;
- Georgian Trust owed York Centre $87,631;
- York Centre owed Cardiff $2,600,713;
- Cardiff owed York Centre $193,000;
- Canalands owed Sentry $261,545;
- Georgian Equity owed York Centre $71,619;
- Sentry owed York Centre $19,873;
- York Centre owed YCPL $33,431;
- Canalands owed Gill $39,057.

(from Exhibit 97, pp. 263–64)

Mr. Leiderman discussed these intercompany balances with Mr. and Mrs. Stevens and how they could be cleaned up, reviewing each loan and ways to deal with it. According to Mr. Leiderman's evidence, both Mr. and Mrs. Stevens contributed to the discussion, and both seemed to understand what was being discussed.

There was also a discussion of ways to strengthen the balance sheet of York Centre — by York Centre increasing its share ownership in Sentry and Canalands, by York Centre merging with a cash flow company, or by making use of Georgian International. Certain specific and current matters were discussed, such as the "then existing mortgage in favour of a numbered company" (Transcript, vol. 15, p. 2209). This was the $2.62 million mortgage in favour of 622109 Ontario Inc. that had been negotiated with Mr. Czapka in April and May 1985. (The transaction is reviewed in Chapter 20.) Mr. Leiderman advised Mr. and Mrs. Stevens that if any properties encumbered by this mortgage were sold, the proceeds would go to the mortgagee, not the mortgagor.

There was also a discussion of the sale of the Barrie real estate property for $236,000, which had closed less than two weeks prior to the meeting. This was the property discussed at the first meeting, on March 16, 1985. The property had been included in the transaction with Mr. Czapka. Thereafter, it was the subject of negotiations between Mrs. Stevens and Mr. Czapka, resulting in Mr. Czapka's granting permission for its sale for $236,000.

Following the meeting, Mr. Leiderman prepared a worksheet that summarized the discussions at the meeting and outlined 11 proposed transactions that involved either an exchange of debt for equity or a repayment of loans between certain York Centre companies. Mr. Leiderman forwarded a copy to Mrs. Stevens on April 17, 1986.

Subsequently, Mr. Leiderman sent Mr. Rowe a letter summarizing the proposed intercompany transactions. The letter was reviewed by the

York Centre board of directors on or about June 27, 1986, and the board passed a resolution that implemented a number of the proposals.

Mr. and Mrs. Stevens' Evidence

Mr. Stevens testified that the meeting of April 13, 1986, was largely in response to the concerns of the accountants, who had been urging for "quite a time" that "there had to be a clearing up of ... [the] intercompany loans" (Transcript, vol. 70, p. 12,004). According to Mr. Stevens, he had to be present at this meeting for two reasons: first, "to [provide] my input as to what had happened prior to my being in the Cabinet as far as these round robins were concerned" (Transcript, vol. 70, pp. 12,004–5); secondly, because of his involvement with Stevens Securities, a company that had a monetary interest in the inter-company loan discussions. Mrs. Stevens testified that a "main purpose" of the meeting was to "make sure that the Stevens Securities group would convert ... their inter-company debt into equity" (Transcript, vol. 65, p. 11,174).

Mr. Stevens testified that he could not recall discussing such matters as the sale of the Barrie property for $236,000, the mortgage in favour of a numbered company, or the use of Georgian International Corporation.

Conclusions

It is not clear from the evidence on whose direction Miss Walker arranged the meeting. Mrs. Stevens testified that although she and her husband wanted the meeting, she was not involved in its arrangement. Mr. Stevens testified that it was his impression that the meeting was a "reaction to the accountants" or "a result of the accountants saying 'can we not get together' " (Transcript, vol. 70, p. 12,004). Mr. Leiderman, however, testified that he was not told why the meeting was being called or what would be discussed. I believe Mr. Leiderman. I am satisfied that it was either Mr. Stevens or Mrs. Stevens who instructed Miss Walker to arrange the meeting with Mr. Leiderman for the Sunday afternoon.

I also find that the testimony, notes, and documentation of Mr. Leiderman relating to the April 13, 1986, meeting must be preferred to the recollection of Mr. or Mrs. Stevens, both of whom failed to remember much of what happened at this meeting and neither of whom took any notes.

I find that the matters discussed at this meeting, and in particular such matters as the sale of the Barrie land for $236,000 and the mortgage in favour of a numbered company, make clear that the meeting was not simply about cleaning up intercompany balance sheets in the abstract or about mere housekeeping matters. The items discussed suggest that a general updating of recent financial developments in the York Centre group of companies was an important part of the agenda.

Indeed, an examination of the spreadsheet itself shows that a number of the entries reflected financial developments that had taken place in 1985 or early 1986, while Mr. Stevens was a minister of the Crown. For example, one entry shows that York Centre owed Georgian Trust $729,217. This indebtedness was a result of a loan of $742,000, in August 1985, by Georgian Trust to York Centre. The $742,000 was obtained by Georgian Trust from the proceeds of its sale of the Ontario Hydro bonds on August 15, 1985. The evidence presented to the Commission and set out in figure 6.2 shows that $742,000 was advanced to York Centre from the August 1985 bond sale. Because Georgian Trust already owed York Centre $12,783, the net advance was thus $729,217, the amount that was set out on the spreadsheet and discussed at the meeting.

I find that, like the first meeting with Mr. Leiderman one year earlier, the second meeting was a lengthy and detailed discussion of the current state of affairs in the York Centre group of companies. Management matters were again discussed, and in detail.

As for the explanation offered of why Mr. Stevens himself had to be present for the April 13 meeting, I am unable to accept the evidence of Mr. and Mrs. Stevens. Neither of them was able to explain to my satisfaction why Mr. Stevens had to be present for a detailed review of all the intercompany balances, a review that included not only the three public companies but such private companies as Cardiff, YCPL, and Gill, the company that was in a blind trust. I am satisfied that Mr. Stevens' reliance upon his interest in Stevens Securities, which was not included in the blind trust assets, as a basis for attendance at the meeting was an effort to create a reason, after the fact, for his presence at a meeting which he ought not to have attended if the dictates of the blind trust were being observed. (The subject of the blind trust and what such a vehicle required of Mr. Stevens is dealt with in detail in Chapter 24.)

I find that Mr. Stevens was present on both occasions not as a casual observer providing background commentary but as an individual who was vitally interested in the management of his companies. I shall return to this point in more detail below.

Chapter 10

Involvement in the La Ronge Goldplay

The La Ronge Greenstone belt is a gold-mining area in northern Saskatchewan that attracted the attention of Mr. and Mrs. Stevens in the fall of 1985. The Commission heard testimony from three witnesses on their dealings with the Stevenses or certain of the York Centre companies during the fall and winter of 1985–86.

Mr. Donald Busby, a mining executive who resides in Colorado, gave evidence about a meeting involving Mr. Stevens on October 11, 1985, and a number of subsequent telephone conversations. Mr. Robert Callander, a specialist in mining finance with Burns Fry in Toronto, gave evidence about his telephone conversation with Mr. Stevens on October 11, 1985, and about certain mining materials that he subsequently forwarded to the minister. Mr. Ronald (Ron) Netolitzky, a Calgary geologist and mining consultant, testified about a telephone call and then a meeting with Mr. Stevens in the fall of 1985 and about certain consulting initiatives for Mrs. Stevens, York Centre, and Sentry in late 1985 and early 1986.

Much of the evidence given by these three witnesses was contradicted or denied by either Mr. or Mrs. Stevens. Mr. Stevens in particular denied any knowledge of any relation between the York Centre group of companies and the La Ronge goldplay. I shall come to the differing versions of the conversations and meetings after setting out in turn the evidence of Messrs. Busby, Callander, and Netolitzky. Although describing what were from their perspectives unconnected incidents, Messrs. Busby, Callander, and Netolitzky were able, through their evidence, to bring together the following cohesive story.

Meeting and Conversations with Mr. Donald Busby

Meeting of October 11, 1985

Mr. Donald Busby is the president of Goldsil Resources Limited (Goldsil), a Canadian subsidiary of Cumberland Resources Inc. (Cumberland Resources). He is also the president of Mahogany Minerals Resources Inc. (Mahogany), a Canadian subsidiary of Goldsil.

Mr. Busby has offices in Denver, Colorado, and Vancouver, British Columbia.

In 1984 Mr. Busby acquired control of Cumberland Resources, an Atlanta-based company, by buying out Martin Truax, then president and controlling shareholder. Mr. Truax stayed on as a financial consultant and a minor shareholder. Mr. Busby and Cumberland Resources owned shares in Golden Rule Resources Limited (Golden Rule), a gold-mining company involved in joint ventures in the La Ronge Greenstone belt of northern Saskatchewan.

Cumberland Resources was attempting to raise $1.5 million (Cdn.) to help develop the mines on its La Ronge properties. Mr. Truax suggested that Mr. Busby come to Toronto to meet with the principals of York Centre, including a Mr. Stevens, "the Financial Minister of Canada" (Transcript, vol. 56, p. 10,023). A meeting was arranged for October 11, 1985.

At about 1:00 p.m. on that date, Mr. Busby arrived at the CDIC offices and shortly thereafter met with Martin Truax and Ted Rowe. Mr. Busby described the Goldsil and Mahogany ventures to Mr. Rowe and generally attempted to persuade Mr. Rowe that York Centre should consider an investment with Cumberland Resources in this area. The meeting lasted about two hours.

Following this meeting, the three men went into Mr. Stevens' office, where Mr. Stevens joined them for a meeting that went on for about an hour and a half. Mr. Busby described the La Ronge Greenstone ventures for Mr. Stevens' benefit, and Mr. Stevens in turn described York Centre to Mr. Busby. Mr. Stevens told Mr. Busby that York Centre had substantial oil holdings in the "North Sea" but needed a pipeline to get the oil out. This could take some years, he explained, and so York Centre would be interested in having something to help it flourish during the years it would be waiting for the pipeline to be built (Transcript, vol. 56, pp. 10,032–33).

Mr. Busby explained to Mr. Stevens that Cumberland Resources was looking for $1.5 million and that, in order to secure such financing, it was willing to consider rights of first refusal on its properties in the La Ronge Greenstone area. Mr. Busby explained that the method of financing was not tied down; it could be arranged by way of convertible debentures, stock purchase, or even direct loan. They then discussed a potential investment by York Centre in the La Ronge goldplay.

Mr. Stevens left the room at one point to make a telephone call. When he returned, he advised Mr. Busby of the current stock quotations for Goldsil and for Golden Rule, and he indicated that both mining companies were known to the Toronto brokerage community. Mr. Busby testified that as far as he was concerned there was an obvious interest on everyone's part to pursue some kind of arrangement.

Mr. Busby then pointed out that it would be impossible for him to advise York Centre on what properties to put into York Centre if the deal went through. He said that one of the most knowledgeable geologists in the area was Mr. Ron Netolitzky, whom he offered to contact — and later did — to ask if he would act as a consultant to York Centre on this matter.

As the meeting was ending Mrs. Stevens arrived, and, together with Miss Walker, the group left for dinner at the CN Tower restaurant. At the table there was some discussion of the goldplay, but the talk consisted mostly of light conversation. Mr. Truax asked Mr. Busby to explain the profitability of a high-grade gold mine, which Mr. Busby did. Because he had a plane to catch, Mr. Busby was at the restaurant less than 50 minutes.

Mr. Busby testified that both meetings on the afternoon of October 11, 1985, were in reference to York Centre. As far as he was concerned, he was dealing throughout with York Centre. York Centre was to furnish the money in some manner — whether through underwriting or by borrowing — to Cumberland Resources, and in turn it would receive certain properties in the La Ronge Greenstone area. Mr. Busby testified that after the meeting of October 11, 1985, Mr. Truax asked him to telephone Mr. Stevens to try to finalize these matters.

Telephone Conversations

Mr. Busby gave evidence that towards the end of November or in the first part of December 1985, he and Mr. Truax made contact with Mr. Stevens in a three-way telephone conversation that lasted 10 or 15 minutes. Mr. Stevens advised them that he wanted to pinpoint the exact properties that York Centre could have an option on and the price at which it could have the option. Mr. Stevens told them that he wanted to "lock in" the actual properties, and he identified specifically three properties that York Centre wanted, namely CBS 7429, 7431, and 7434 (Transcript, vol. 56, p. 10,041). In each of these properties Goldsil had more than a 50 percent interest. Mr. Busby recalled that Mr. Stevens was basically asking what it would cost York Centre to become involved in these properties. Mr. Busby was not able to provide an answer immediately but advised Mr. Stevens that he would look into the matter and call him back.

Mr. Busby testified that he had a second telephone conversation with Mr. Stevens about three or four weeks later. Mr. Stevens advised Mr. Busby that York Centre was interested in making a loan to Cumberland Resources but was wondering what Cumberland Resources could offer as collateral. Mr. Busby told Mr. Stevens that he would be able to furnish collateral that would be in the form of a tradeable security. Nothing more was covered, and Mr. Busby had no further discussions with Mr. Stevens.

Mr. Stevens' Evidence

Mr. Stevens' version of the meeting of October 11, 1985, and the subsequent conversations is fundamentally different from Mr. Busby's.

According to Mr. Stevens, the meeting of October 11, 1985, was initiated by a call from Martin Truax, who told Mr. Stevens that his group, including Donald Busby, had an interest in a goldplay in the La Ronge area and wanted Mr. Stevens' help in securing an investment in Cumberland Resources. Mr. Stevens testified that he met with Mr. Truax and Mr. Busby in his ministerial capacity only and as a personal favour to his old friend Martin Truax. According to Mr. Stevens, there was no discussion of York Centre or its holdings or activities, of any potential investment by the York Centre group, or of any Cumberland-related properties that would be offered to York Centre as part of a financing or loan arrangement.

Mr. Stevens testified that he was interested in the "Toronto attitude" towards the La Ronge goldplay and the companies with which Mr. Busby was involved (Transcript, vol. 70, p. 12,039). Mr. Stevens left the room at one point and made a telephone call to a brokerage house. He then returned to the meeting to report on the stock quotations on Goldsil, Mahogany, and Golden Rule and to advise Mr. Busby and Mr. Truax that the Toronto brokerage community had heard of the companies. Mr. Stevens also testified that he then offered to introduce Mr. Busby and Mr. Truax to potential investors and that subsequently he made some telephone inquiries of Mr. John Gairdner and others on Cumberland Resources' behalf.

As for the two telephone conversations, Mr. Stevens' evidence again differed markedly from Mr. Busby's. Mr. Stevens testified that some time after the October 11, 1985, meeting, Mr. Truax called him to see if he had had any success in locating potential investors. Mr. Stevens reported that he was having some difficulty. It was at this time that the idea of providing an option on some of the gold-mining properties was raised as a way to attract investors. According to Mr. Stevens, Mr. Truax suggested that Mr. Stevens discuss this with Mr. Busby. Mr. Stevens did so, and Mr. Busby in turn recommended that Mr. Stevens contact Mr. Ron Netolitzky in order to obtain an independent valuation of the properties available.

Mr. Stevens denied saying anything to Mr. Busby about wanting to pinpoint the exact properties on which York Centre could obtain an option or the price at which York Centre could acquire them. According to Mr. Stevens, throughout his dealings with Mr. Busby, both at the meeting of October 11, 1985, and in the follow-up telephone conversations, he was acting in a ministerial capacity in an effort to help his friend Martin Truax find potential investors for the Cumberland Resources goldplay. He testified that to his knowledge neither he nor York Centre had any interest in the goldplay; nor did Mr. Stevens ever refer to York Centre in the context of a proposed investment in any goldplay.

Conversation with Mr. Robert Callander

Telephone Call from Mr. Stevens

Mr. Robert Callander, a mining specialist with Burns Fry, testified that he received a telephone call from Mr. Stevens on Friday, October 11, 1985. Through his involvement as a Burns Fry consultant in the privatization of certain CDIC assets, Mr. Callander knew Mr. Stevens. In the course of this work for the federal government he had occasion to speak with Mr. Stevens — who had ministerial responsibilities for CDIC — both on the telephone and in person.

On October 11, 1985, Mr. Stevens telephoned to say that he had been meeting with a number of people concerning a Saskatchewan gold exploration play in the La Ronge area; he wanted to know if Burns Fry had any background information on the play itself, and how it would compare with a major gold-mining play. Mr. Stevens also wanted to know if Burns Fry knew any of the people involved or had any background information on certain companies. He mentioned Mr. Murray Pezim by name and also Canadian Premier Resources, Mahogany, and Golden Rule.

At the end of the conversation, Mr. Stevens asked Mr. Callander if he thought this kind of gold exploration play "could add some excitement or bring some life to York Centre" (Transcript, vol. 44, p. 8066). Mr. Callander answered that he did not know anything about York Centre and thus would not know if this kind of goldplay could add some excitement to the company. Mr. Stevens then asked Mr. Callander if he knew Ted Rowe at York Centre. Mr. Callander did not.

Mr. Callander then suggested to Mr. Stevens that Burns Fry would put all the information together in a package and send it to Mr. Stevens. Mr. Stevens, if he had any questions about the materials, could call Mr. Callander. Mr. Stevens agreed. The materials were collected and sent over, and Mr. Stevens, having received the package of information on the gold-mining properties, later called Mr. Callander to thank him.

Mr. Stevens' Evidence

Mr. Stevens testified that he left the October 11 meeting at one point to call Burns Fry to find out what the view in Toronto was about the La Ronge goldplay. Mr. Stevens could not recall speaking specifically with Mr. Callander, but he did recall that he obtained some information about the La Ronge goldplay and that he took this information back to the meeting.

Mr. Stevens could not recall asking Mr. Callander if he thought the goldplay could add some excitement or bring some life to York Centre. Nor could Mr. Stevens recall asking Mr. Callander if he knew Ted Rowe at York Centre.

Conversation and Meetings with Mr. Ronald Netolitzky

Telephone Call from Mr. Stevens

Mr. Ron Netolitzky, a Calgary geologist and mining consultant, is president of Taiga Consultants Ltd. He knows Mr. Busby and has consulted with Mr. Busby's companies in the past. He is very familiar with the La Ronge area in northern Saskatchewan.

Mr. Netolitzky testified that in late October or early November 1985 he received a telephone call from Mr. Busby, who advised him that he would be getting a telephone call concerning some consulting work in Toronto. Mr. Netolitzky testified that this was followed by a call from Mr. Stevens himself. Mr. Stevens asked Mr. Netolitzky if he would be available "for consulting work on behalf of his wife or his wife's companies" (Transcript, vol. 58, p. 10,195).

Arrangements were made for Mr. Netolitzky to come to Toronto, with a stop first in Saskatoon to review a La Ronge area property called the Preview Lake Prospect. On November 26, 1985, on his way to Toronto, Mr. Netolitzky arrived in Saskatoon, where he signed a confidentiality agreement on behalf of York Centre with the Saskatchewan Mining Development Corporation (SMDC), the owner of the property. This agreement allowed him to obtain information on Preview Lake. He brought this information with him to Toronto on November 27, 1985.

Meeting at the Stevens Farm

Mr. Netolitzky met with Mr. and Mrs. Stevens and with Mr. Ted Rowe at the Stevens farm on the morning of November 27, 1985. The meeting was introductory in nature. Mr. Netolitzky gave a general description of the activities of the various companies in the La Ronge Greenstone belt in northern Saskatchewan. The four participants discussed the geology of the area and the mining activities in a general way and then had lunch.

There was no discussion of Mr. Busby or any of his properties. Indeed, there was no discussion of any specific properties. From the conversation, however, Mr. Netolitzky assumed that York Centre was interested in acquiring an interest in some of the mining properties in that area.

Other Meetings and Related Developments

After lunch, Mr. Netolitzky accompanied Mrs. Stevens and Mr. Rowe to the York Centre office in Commerce Court West. Mrs. Stevens, Mr. Rowe, and Mr. Netolitzky discussed the specific properties that were available in the Goldsil group, and Mr. Netolitzky pointed out the ones that in his view had a high priority. Later in the afternoon they met Mr. Ed Wenger, an oil and gas geologist and an associate of Mrs. Stevens.

Mr. Netolitzky reviewed the Preview Lake property and the Goldsil properties and provided his opinion again of their potential. Mr. Netolitzky attended a number of other meetings the following day and then returned to Calgary. Thereafter, Mr. Netolitzky dealt primarily with Mrs. Stevens.

In early December 1985 Mr. Netolitzky was advised that the Preview Lake property would not be pursued and that the Goldsil properties were too expensive. Mr. Netolitzky was asked if there were any other properties available. He recommended an SMDC property and suggested that Sentry enter into a joint venture with a senior mining company, possibly Giant Yellowknife Mines Limited (Giant Yellowknife). Acting on this suggestion, Mrs. Stevens wrote to Giant Yellowknife to explore the possibility, but nothing came of this.

Mrs. Stevens asked Mr. Netolitzky to continue to search for a suitable property for Sentry, and in January 1986 Mr. Netolitzky contacted SMDC again and learned that another SMDC property, the "Kirk Lake property," was available for farmout. Mr. Netolitzky then drafted a letter for Mrs. Stevens and Sentry to send to SMDC. After several months of further negotiation, Sentry, Giant Yellowknife, and SMDC agreed to a three-year joint venture. Mr. Netolitzky testified that following the initial telephone call from Mr. Stevens, and the morning meeting at the farm, his principal contact throughout these negotiations and dealings was Mrs. Stevens.

Mr. and Mrs. Stevens' Evidence

Mr. and Mrs. Stevens' evidence of their dealings with Mr. Netolitzky and especially of the meeting of November 27, 1985, is markedly different from that of Mr. Netolitzky. Not only does their evidence contradict that of Mr. Netolitzky, but it is difficult to reconcile even as between the two of them.

This is evident from the first telephone call to Mr. Netolitzky. Mr. Stevens testified that he had called Mr. Netolitzky because Mr. Busby had recommended him as someone who would be able to suggest possible gold-mining properties for potential investors. Mr. Stevens further testified that in his telephone conversation with Mr. Netolitzky he told him that he was trying to identify three properties in particular which could be put into a package to help the financing along, and that he needed Mr. Netolitzky's help. Mr. Stevens could not recall saying anything about his wife or his wife's companies or about Mr. Netolitzky's making himself available to do consulting work for Mrs. Stevens or her companies.

Mrs. Stevens, on the other hand, testified that she had telephoned Mr. Netolitzky herself and asked him to meet with her at the Stevens farm to discuss the La Ronge goldplay in more detail. She testified that she authorized Mr. Netolitzky to execute a confidentiality agreement with SMDC on behalf of York Centre, Canalands, and Sentry so that he could bring the necessary information to the Toronto meeting. Mrs. Stevens also testified that she did not know why her husband would have called Mr. Netolitzky himself.

Mr. Stevens testified that he was not aware that his wife had also spoken to Mr. Netolitzky and had directed him to sign a confidentiality agreement in order to obtain more information about certain Saskatchewan properties.

In any event, both Mr. and Mrs. Stevens were looking forward to the Netolitzky visit but, according to their testimony, for very different reasons. Mrs. Stevens wanted Mr. Netolitzky to meet with her and with Mr. Rowe at the Stevens farm on November 27, 1985. As far as Mrs. Stevens was concerned, her husband simply "was there" recovering from surgery (Transcript, vol. 66, p. 11,396). Mr. Stevens had just had heart surgery and was convalescing. Mr. Stevens, however, testified that he attended the meeting to obtain the information he had requested of Mr. Netolitzky about the three properties that could help attract investors to the Cumberland Resources financing.

Mrs. Stevens testified that Mr. Netolitzky brought various maps of Saskatchewan with him and that the meeting was nothing more than a general information session. Mr. Stevens, however, testified that during the course of this meeting Mr. Netolitzky identified the three properties that would be attractive to potential investors and marked these properties on the maps he had brought with him. Mr. Stevens then testified that after he received the information he wanted on the three properties, he left the room to make a number of telephone calls and had no further involvement. According to Mr. Stevens, the first time he learned his wife and Mr. Rowe were indeed discussing a possible Sentry involvement in the Saskatchewan goldplay was months later, after his resignation as minister.

Conclusions

As I stated earlier, the evidence of Mr. and Mrs. Stevens and that of Messrs. Busby, Callander, and Netolitzky is fundamentally irreconcilable. Mr. Stevens' evidence in particular directly contradicts the evidence of the three witnesses on fundamental matters regarding the character and content of the various meetings and telephone conversations. For me to accept Mr. and Mrs. Stevens' version of these events, I would have to disbelieve the evidence of Messrs. Busby, Callander, and Netolitzky. These were three independent and unrelated witnesses whose testimony, as noted earlier, meshed together and provided a cohesive picture, albeit from differing perspectives, of what transpired.

I found the testimony of Messrs. Busby, Callander, and Netolitzky to be forthright and credible. Each of the three witnesses impressed me with the care with which he testified. Even though there were minor errors in some facts stated, these enhance rather than detract from my assessment of their evidence. These errors are typical of witnesses who make no effort to manufacture or give studied testimony. Mr. Busby, for example, testified that his U.S. colleague, Mr. Martin Truax, had advised him that Mr. Stevens was the "Financial Minister of Canada." Although this was not factually accurate, I have no doubt that this is what he was told. Similarly, Mr. Busby recalled a reference by Mr. Stevens that York Centre had substantial oil holdings in the "North Sea" but needed a pipeline to get the oil out. Here again, the detail was not factually correct but was Mr. Busby's honest recollection, and he did not attempt to alter it. In short, Mr. Busby genuinely endeavoured to recall as carefully as possible the meetings and discussions he had had with Mr. Stevens in relation to the La Ronge goldplay. I accept his evidence.

Mr. Callander and Mr. Netolitzky displayed a similar concern to recall what had taken place. Mr. Callander was well aware of the importance of the evidence he was giving and was visibly concerned that he present his recollection of the telephone conversation with Mr. Stevens in the fairest and most accurate fashion.

The same can be said for Mr. Netolitzky. Here too was a witness who testified carefully and honestly. I should note that even without the evidence of Mr. Netolitzky, I would have had great difficulty accepting the evidence of Mr. and Mrs. Stevens, particularly when the evidence the two of them gave was itself difficult to reconcile. To accept Mr. and Mrs. Stevens' version of what transpired at their meeting with Mr. Netolitzky, I would have had to find in effect that Mr. and Mrs. Stevens ended up at the same meeting on the same morning in their own home with the same person, but for two unrelated reasons, and that none of this was discovered until months later.

I believe the evidence of Messrs. Busby, Callander, and Netolitzky, and I find the facts in relation to the La Ronge goldplay to be as follows. I find that Mr. Stevens arranged to meet with Mr. Busby on October 11, 1985, not as a disinterested minister of the Crown attempting to find potential investors for his old friend Martin Truax, but as a principal of York Centre with a direct interest in discussing a York Centre-related involvement in the La Ronge goldplay. The discussions at the meeting related to a possible investment by York Centre in Mr. Busby's properties. For this reason, during the meeting Mr. Stevens called Mr. Callander of Burns Fry to ask about Mr. Busby's companies and whether the La Ronge goldplay "could add some excitement or bring some life to York Centre." Some time after the October 11 meeting, Mr. Busby informed Mr. Netolitzky that he should expect some consulting work from Toronto. Mr. Stevens called Mr. Netolitzky to ask if he would be available "for consulting work on behalf of his wife or his wife's companies." Mr. Netolitzky then came to Toronto and on the morning of November 27, 1985, met with Mr. and Mrs. Stevens and Mr. Rowe and discussed in a general way the La Ronge gold-mining area and its potential.

I find that the three farmout properties supposedly identified by Mr. Netolitzky at the morning meeting with Mr. Stevens were really identified and discussed by Mr. Netolitzky at the afternoon meeting with Mrs. Stevens, who then carried the information back to her husband. Mr. Stevens then identified these properties to Mr. Busby in their telephone conversation, not as part of a disinterested suggestion to help Mr. Busby attract potential investors but as part of the negotiation for an investment by York Centre in the La Ronge goldplay. That these properties were being considered by York Centre is made plain in documentary evidence received by the Commission, in particular by a letter dated February 5, 1985, from Mr. Rowe to Mr. Tom Crom of Cumberland Resources, in which Mr. Rowe sets out York Centre's understanding of a proposed loan to Cumberland Resources. Mr. Rowe refers to the three farmout properties — CBS 7429, 7431, and 7434 — and suggests that Goldsil's interest in these three properties would have to be assigned to York Centre for a nominal consideration as part of the proposed transaction.

York Centre's eventual involvement in the La Ronge goldplay was not through Mr. Busby's companies but through a partnership arranged by Mr. Netolitzky with Sentry, Giant Yellowknife, and SMDC. I find that this was an important new initiative for the York Centre group of companies, designed to "bring some life to York Centre."

I find that Mr. Stevens initiated the contacts with both Mr. Busby and Mr. Netolitzky and that Mrs. Stevens followed through on the initiative. Further, I find that Mrs. Stevens kept Mr. Stevens fully informed as to the progress of the gold play and that Mr. Stevens remained interested and involved as the initiative developed.

Chapter 11

Involvement in the Christ Coin Proposal

The Commission heard evidence that, beginning in the fall of 1985, Mr. and Mrs. Stevens became involved in a proposal to market a gold coin that would commemorate the two-thousandth anniversary of the birth of Christ and would be minted by the Vatican. The "Christ coin" proposal involved a sophisticated application of the strip bond concept. Its development in the fall and winter of 1985–86 brought Mr. and Mrs. Stevens into contact with officials of both the Chase Manhattan Bank and the Vatican.

During the course of the Inquiry, Commission counsel brought an application for letters rogatory so that certain Chase Manhattan officials residing in New York City could be compelled to give evidence to the Inquiry. Although I concluded that this evidence was relevant, I declined to issue a letter of request to the judicial authorities in the State of New York so that this evidence could be obtained. My reasons for so ruling were recorded and are set out in Appendix K to this report. The Inquiry proceeded without the evidence of officials from the Chase Manhattan Bank and the Chase Manhattan Capital Markets Corporation because, on the basis of the other evidence presented, the pertinent details of the Christ coin proposal were sufficiently explained.

Mr. and Mrs. Stevens eventually abandoned the Christ coin proposal. In the several months of its development, however, the discussions and meetings revealed important evidence concerning the nature and extent of Mr. Stevens' involvement in private business matters while he was a minister of the Crown.

Background

Mr. and Mrs. Stevens' involvement in the gold coin proposal developed out of a long-standing interest in strip bonds and their applications. The Commission heard evidence that, throughout their marriage, Mr. and Mrs. Stevens had often discussed the application of different financial instruments in various settings. Mr. Stevens in particular takes credit for helping to develop the strip or "zero coupon" bond concept in both the Canadian and U.S. financial markets.

Indeed, in the early 1980s, having encountered some resistance from financial institutions in Toronto, Mr. and Mrs. Stevens turned to institutions in the United States and began to meet with Mr. Jim Stewart and Mr. Joe Wilson of the brokerage firm Merrill Lynch. Both Mr. Stewart and Mr. Wilson recognized that the strip bond concept had potential, and after further research Merrill Lynch developed its own version of the product, called the "Tiger."

Mrs. Stevens testified that with the issuance of the Merrill Lynch Tiger, strip and zero coupon bonds became increasingly popular in the United States. Merrill Lynch sold billions of dollars' worth of strip bonds. Other brokers in the United States followed suit, and in the early 1980s the idea began to catch on in Canada.

According to Mrs. Stevens, one of the main reasons behind the popularity of the strip bond was the widely held view that income tax was not payable until the residual or the coupon matured. Thus an individual could accumulate the interest over the period of the life of the bond and avoid taxation until the bond or coupon came due.

Mrs. Stevens testified that the taxing authorities in both Canada and the United States dealt a serious blow to the financial viability of the strip bond when they clarified the tax laws and required the individual to accrue the interest every three years and include it as income. The market for strip bonds thus began to decline.

Mr. and Mrs. Stevens discussed applications of the strip bond that could avoid the new tax changes; for example, they considered applying a strip bond to a commodity such as art. They also began to discuss the idea of using a commemorative gold coin backed by a strip bond. Various tax and securities law experts were approached for their opinions. The future value of the coin would be guaranteed by a strip bond whose maturity date would coincide with the take-out date on the coin.

One of the ideas that Mr. and Mrs. Stevens had in 1983 was to use a gold coin to commemorate the five-hundredth anniversary of Columbus' discovery of America. This idea was abandoned, however, because the period between 1983 and the anniversary year, 1992, was only nine years and thus too short to accommodate a financially viable strip bond application. A more appropriate time frame would have a take-out date in 1999 or 2000.

In the spring of 1984 Mrs. Stevens came upon the idea of a gold coin to commemorate the two-thousandth anniversary of the birth of Christ. The coin would be issued by the Vatican and dated December 25, 2000, a more workable take-out date for a strip bond application.

Development of the Christ Coin Proposal

Mr. Stevens testified that he mentioned to Mr. Stewart, who was then still with Merrill Lynch, that he and Mrs. Stevens had come up with a new idea involving strip bonds that would avoid the tax problem. In the summer of 1985 Mr. Stewart left Merrill Lynch and joined the Chase Manhattan Bank in New York City. He stayed in touch with Mr. and Mrs. Stevens and told them that he would be interested in learning if their idea was something that could involve Chase Manhattan.

On October 18, 1985, Mr. Stevens, while in New York City to give a speech to the Canadian Club, met with Mr. Stewart. Mr. Stewart was eager to hear more about the gold coin proposal and, over the next several months, had a number of conversations with Mrs. Stevens. By mid-December Mr. Stewart and his colleagues at the Chase Manhattan Capital Markets Corporation, a subsidiary of Chase Manhattan Bank in New York City, were considering the gold coin proposal.

On December 13, 1985, Mr. Stevens telephoned Emmett Cardinal Carter of the Roman Catholic archdiocese of Toronto to discuss the possibility of having the gold coin minted by the Vatican. Mrs. Stevens testified that although it was her idea to telephone Cardinal Carter, Mr. Stevens telephoned because he knew him better. Cardinal Carter's response was positive.

Mr. Stevens' telephone call to Cardinal Carter was followed by a letter from Mrs. Stevens on December 16. The letter set out the "Christ coin" proposal in more detail. The basic idea was that the Vatican would agree to be the issuing authority and the actual minter of the gold coin. The coin would be dated 1986, but the reverse side would bear the date December 25, 2000, and would have a guaranteed U.S. dollar value at the redemption date. Mrs. Stevens suggested that the guaranteed value of the coin in the year 2000 be U.S. $1000. The coin would be issued in 1986 at a retail price of U.S. $300. Thus, according to Mrs. Stevens, the buyer would be buying "a $1,000 future value coin for $300 to-day" (Exhibit 188, p. 14).

The letter advised Cardinal Carter that the Chase Manhattan Capital Markets Group in New York City was currently reviewing the project with a view to guaranteeing the U.S. dollar value for the coin in the year 2000. Chase Manhattan would do so by purchasing a strip U.S. treasury bond with a $1000 face value that would be due on or near December 25, 2000. Mrs. Stevens calculated that even with the costs of minting, marketing, and distribution, there would still be a "margin" to allow a "payment to the Vatican" and a "bottom line profit for the Co sponsors" (Exhibit 188, p. 14).

Mrs. Stevens also explained that the Chase Manhattan guarantee would be like a "put option"; that is, if the coin sold for more than $1000 in the year 2000, the holder would realize the better price and would not put to Chase Manhattan the obligation to redeem the coin for the face value of the bond. Mrs. Stevens estimated that realistically one million gold coins could be issued. At a current sale price of U.S. $300 million, this would result in a guaranteed value of U.S. $1 billion in the year 2000.

Mrs. Stevens concluded by asking that Cardinal Carter "inquire with the appropriate authority in the Vatican if they would be interested in issuing such a coin to commemorate the Birth of Christ." Mrs. Stevens then indicated that, if there was such interest, "we in due course would like to discuss the proposal in more detail with your officials in Rome" (Exhibit 188, p. 15).

On December 19, 1985, Cardinal Carter responded by letter to Mrs. Stevens that the project "sounds extremely interesting" and that he was writing immediately to Cardinal Baggio, the president of the pontifical commission for Vatican City (Exhibit 188, p. 17). On the same day, in a letter to Cardinal Baggio, Cardinal Carter set out the gold coin proposal. He indicated that the gold coin project was presented to him by "the Honourable Sinclair Stevens, the Minister of Regional Industrial Expansion in the present Canadian Government." He also advised Cardinal Baggio that Mr. Stevens had "turned the matter over to his firm which is the firm of Stevens & Stevens, Barristers & Solicitors, near Toronto," and that "one of the firm members, Mrs. Noreen M. Stevens," had written to Cardinal Carter with regard to the proposal (Exhibit 188, p. 18).

Cardinal Carter then set out excerpts from Mrs. Stevens' letter of December 16, 1985. Cardinal Carter indicated that he found the proposal "extraordinarily interesting from many points of view," and ended by offering to send further information and noting that if the Vatican reaction were favourable, then some of the members of the Stevens & Stevens law firm would be prepared to visit with Cardinal Baggio in Rome (Exhibit 188, pp. 18, 20). Cardinal Baggio replied in a letter dated January 21, 1986. I shall come to this shortly.

On January 16, 1986, Mrs. Stevens wrote to Mr. Stewart at Chase Manhattan and advised him as follows: "We are intending to structure a Group to facilitate this type of activity and would be pleased to continue our discussions with you as to your participation in this Joint Venture with us" (Exhibit 188, p. 37). Mrs. Stevens set out a "marketing plan" in the letter that would blend the sale of the commemorative coins with "put and call options." She also set out the various profit margin calculations associated with a $10,000 face-value strip bond that would be redeemable in the year 2004. Mrs. Stevens then summarized earlier discussions covering the need for sponsoring corporations, a lending bank, marketing agents, paying agents, an issuing sovereign state, and trustees, and she invited further discussions as to corporations that "might be interested in participating in this Programme" (Exhibit 188, p. 38).

The letter concluded with a brief analysis of the tax implications and with Mrs. Stevens' opinion that, because the transaction was essentially a "put arrangement," there would probably be no income tax implications apart from a capital gain when the put was exercised. She attached a copy of a letter from McCarthy & McCarthy dated January 14, 1986, setting out the law firm's opinion on the tax questions.

According to Mr. and Mrs. Stevens, the importance of this gold coin application to strip bonds was that the recently introduced requirements of the income tax laws, deeming interest to accrue every three years, could be avoided. Even if the gold coin had a guaranteed take-out value at some future date, the taxing authorities would be influenced by the possibility that, at this date, the gold coin itself could be worth more than the value of the put option. The taxing authorities would have to wait until that future date to determine the actual sale price of the coin. Then, at that time, the holder of the gold coin would have three options: sell the coin, keep the coin, or exercise the put. The taxing authorities would have to wait until the holder exercised one of the three options before deciding on the level of taxation. Thus, there could be a tax deferral until the year 2000 or 2004. According to Mr. and Mrs. Stevens, this was precisely the advantage that strip bonds enjoyed prior to the changes in the income tax law.

The key to success, however, was a solid and reputable financial sponsor. Mrs. Stevens testified that it was "important" to have a "recognized institution" such as Chase Manhattan to promote the gold coin proposal successfully (Transcript, vol. 64, p. 10,855). Mr. Stevens agreed that an institution of some repute was needed to guarantee the payment in the year 2000. Mr. and Mrs. Stevens testified that they went to Chase Manhattan and Chase Manhattan Capital Markets Corporation because of their dealings with Mr. Jim Stewart.

Discussions with Chase Manhattan

On January 16, 1986, Mr. Stewart and his colleague Mr. Michael Hudson of Chase Manhattan Capital Markets Corporation were in Ottawa meeting with officials of DRIE. Mr. Stewart suggested to Mr. Stevens that he come to New York the next day to meet with other Chase Manhattan officials and further explore Chase Manhattan's possible involvement in a number of federal government projects.

Mr. Stewart suggested that Mrs. Stevens also fly down to meet with the Chase Manhattan lawyers who were working on the gold coin proposal. Mrs. Stevens testified that her trip to New York was thus "a fairly last-minute thing" (Transcript, vol. 64, p. 10,881). She went to Ottawa that night and then flew to New York City early the next morning with her husband, Mr. Stewart, and Mr. Hudson.

Upon arrival in New York City, they went directly to the Chase Manhattan offices and began a series of meetings that covered a variety of topics and involved various participants. There were two meetings in the morning. The first involved government business and related to the Sydney Steel Corporation (Sysco) project. There was then a discussion of the gold coin proposal. According to Mrs. Stevens, Mr. Stevens took part in the discussion because he was the inventor of the strip bond and was best able to explain the intricacies of the gold coin/strip bond proposal.

The meetings continued after lunch. There were discussions of more government matters relating to the development of Cape Breton, including Sysco, a thermal-energy project, and an oil refinery project. Then the gold coin proposal was discussed again with the Chase

Manhattan officials and their lawyers. Both Mr. and Mrs. Stevens testified that Mrs. Stevens did not participate in the discussion of government matters. She was, however, present for some of the governmental discussions — indeed, she was even able to identify some of the matters that were being discussed. Nonetheless, during some of the government discussions she left the meeting room to wander around the building and view the artwork.

According to Mrs. Stevens, the afternoon discussion of the gold coin proposal concluded with the Chase Manhattan officials thinking that there was some merit in the proposal. They advised Mr. and Mrs. Stevens, however, that they wanted to consider the matter further and review the McCarthy & McCarthy tax opinions. Mr. and Mrs. Stevens then returned to Toronto.

On January 21, 1986, Mrs. Stevens wrote to Cardinal Carter to report on the meeting and to advise him that Chase Manhattan was "very enthusiastic" about the marketing of the gold coin. Chase Manhattan was hoping to hear from its lawyers in the very near future because it was "most anxious to market the Coin this year" (Exhibit 188, p. 50). Mrs. Stevens advised Cardinal Carter that she and Mr. Stevens would be in Europe in the next three weeks and asked if he could arrange an appointment for them to meet with Cardinal Baggio in Rome some time in early February. As things turned out, Mrs. Stevens did not accompany her husband to Europe. Mr. Stevens testified that while in Davos, Switzerland, attending a conference at the end of January 1986, he tried unsuccessfully to reach Cardinal Baggio by telephone.

On January 23, 1986, Mrs. Stevens wrote to Mr. Stewart at Chase Manhattan to thank him for the January 17 meetings and to answer a question that had been raised by the tax lawyers: Could a gold coin in fact increase in value so as to justify a put price 10 or 20 times the issued price of the coin? Mrs. Stevens advised that there were numerous examples of this happening in the gold coin area. She forwarded excerpts from a coin book entitled *High Profits Without Risk* and advised that she would be happy to talk with the tax lawyers further if they required any more information.

On February 6, 1986, Mr. Stewart was in Toronto and met briefly with Mrs. Stevens at the York Centre offices in Commerce Court West. Mr. Stewart advised Mrs. Stevens that the U.S. tax lawyers did not think the gold coin proposal could have an application in the United States. Mrs. Stevens communicated this news to Mr. Stevens, who discussed the matter briefly with Mr. Stewart that evening when they had dinner together. According to Mr. Stevens, Mr. Stewart told him he was sorry that the tax lawyers could not see fit to support the concept that a tax would not accrue.

As it turned out, Cardinal Baggio had written to Cardinal Carter on January 21, 1986, advising him that the Vatican would not be in a position to consider the project outlined by Mr. Stevens because the Vatican was limited by a treaty with Italy in its ability to mint coins.

The evidence was not clear as to when this information was conveyed by Cardinal Carter to Mr. and Mrs. Stevens, but I assume it was in early February.

That in effect ended the discussions with Chase Manhattan and with Cardinal Carter and the Vatican. After February 6, 1986, Mrs. Stevens had no further discussions with Mr. Stewart with respect to the Christ coin proposal. Mrs. Stevens testified, however, that she was still working on certain aspects of the gold coin proposal.

Conclusions

It is obvious that Mr. Stevens' meeting with the Chase Manhattan officials on January 17, 1986, in his capacity as the minister of DRIE, and his discussion with them of both private business and government business, is a matter that relates to one of the allegations of conflict of interest that I must address in due course: the mingling of private and public business. This allegation and the extent to which the evidence relating to Chase Manhattan establishes a real or apparent conflict of interest on the part of Mr. Stevens is covered in considerable detail in Part Four of the report. My concern here is to review the gold coin proposal and the meetings with Chase Manhattan in a more limited context in order to assess the nature and extent of Mr. Stevens' involvement in private business matters while he was a minister of the Crown.

In this regard, I am satisfied that the evidence set out above allows me to make a number of findings. First, I find on the evidence that the Christ coin proposal was a commercial or money-making idea. I note that Mr. and Mrs. Stevens testified that they were merely pursuing a "hobby" and that the discussions with Chase Manhattan were still at the "conceptual" stage and had not yet materialized into a business proposition. However, I reject these characterizations. Indeed, I confess that I have some difficulty with the repeated reliance on the words "concept" or "conceptual" — as if this immunizes the activity. I find in any event that the suggested distinctions are quite unimportant.

Whether one finds from the letters to Cardinal Carter or to Mr. Stewart of Chase Manhattan or from the discussions that took place on January 17, 1986, that the gold proposal was merely a concept with commercial possibility or had reached the stage of commercial feasibility, matters less than the self-evident observation that this was a significant and substantial money-making venture. A proposal to market one million gold coins with a guaranteed take-out value of U.S. $1 billion is more than just a "hobby." Indeed, Mr. Ted Rowe agreed that when Mrs. Stevens and Mr. Philip MacDonald were discussing the gold coin idea in 1984 in conjunction with Georgian International U.K., they were discussing a "business activity" and a "commercial" idea as opposed to a mere "hobby" (Transcript, vol. 22, p. 3525).

Secondly, I find that the evidence reveals that the nature and extent of Mr. Stevens' involvement in the discussions and development of the gold coin proposal was both intimate and substantial. Indeed, it was Mr. Stevens who made contact with Mr. Jim Stewart in October 1985, telephoned Cardinal Carter in December 1985, arranged to meet with the Chase Manhattan officials in January 1986, and attempted to contact Cardinal Baggio by telephone while at a conference in Davos. I also find that, as was their habit with financial matters, Mr. and Mrs. Stevens discussed the financial dimensions of the gold coin proposal and the "put option" scheme fully and freely, whenever necessary and without any reservation.

Thirdly, I find that the gold coin proposal was being developed on behalf of a client, but the "client" was a York Centre company, namely Georgian Equity and/or Georgian Trust. Mrs. Stevens agreed on cross-examination that the gold coin proposal was "fundamentally a Georgian exercise" that would be developed "by or on behalf of the Georgian group" (Transcript, vol. 64, pp. 10,913, 10,914). Indeed, other evidence attests to this fact as well. The letters to Mr. Stewart are written on Georgian Equity letterhead; the letters to Cardinal Carter are on Stevens & Stevens letterhead but refer to "our Client, The Georgian Group" (Exhibit 188, pp. 37, 52, 14, and 50). Also, the statements of account from both Canadian and U.S. law firms for legal services rendered in connection with the gold coin proposal were rendered either to Georgian Trust or in reference to Georgian Equity (Exhibit 188, p. 6, and Exhibit 189, p. 15).

In sum, the Christ coin proposal was a significant money-making scheme that, if successful, would have yielded substantial financial rewards for both the "Georgian group" and for Mr. and Mrs. Stevens.

Chapter 12

The Meeting with Angus Dunn of Morgan Grenfell

The fourth area of private involvement involved a meeting with Mr. Angus Dunn, a director of Morgan Grenfell.

Description of Events

Morgan Grenfell is a large merchant bank in the United Kingdom which has been active since 1980–81 in assisting the British government in many of its privatization projects. It has also had extensive dealings in Canada in both the private and public sectors.

As early as November 1984, in response to the Canadian government's policy of privatization, Morgan Grenfell, through the former head of its International Finance Department, William Hopper, contacted officials of the government including Mr. Stevens under whose mandate privatization lay. On behalf of Morgan Grenfell, Mr. Hopper offered a range of services to assist in the privatization process and to promote foreign investment in Canada. Several meetings were held between Mr. Stevens, his cabinet colleagues, and Mr. Hopper.

These general discussions continued intermittently throughout the winter, and at the end of February 1985 Mr. Stevens stopped off in London on the first leg of the Air Canada inaugural flight to Singapore. During a luncheon reception in London he discussed these privatization and investment issues with Christopher Reeves, the chief executive officer of Morgan Grenfell.

Mr. Reeves, anticipating Mr. Stevens' arrival in Singapore, contacted his colleague Angus Dunn, a director of Morgan Grenfell, who was residing in Singapore and then acting as the company's regional director in Southeast Asia. Mr. Reeves suggested that Mr. Dunn endeavour to meet with Mr. Stevens in Singapore to continue discussions. In response to Mr. Reeves' request, Mr. Dunn got in touch with the office of the Canadian high commission in Singapore and subsequently attended a cocktail party hosted by the Canadian government at which Mr. Stevens was present. After a brief conversation with Mr. Dunn, Mr. Stevens suggested that they meet again if Mr. Stevens' schedule permitted.

Shortly thereafter, Mr. Dunn was telephoned and invited to a meeting in the minister's hotel suite. On arrival, he found the minister, several of the minister's staff, including Mr. Phil Evershed, his executive assistant, and officials from the office of the high commission. The discussion focused on what kind of proposal the minister would like to see from Morgan Grenfell on their possible advisory role in relation to both privatization and inward investment. This meeting was interrupted and, again at Mr. Stevens' suggestion, Mr. Dunn was asked to call him later in the evening to see if they might pursue the discussion.

In response, Mr. Dunn telephoned the minister at 10:00 p.m. and was invited to call upon him at his hotel. Mr. Dunn arrived at the hotel between 10:00 and 10:30 and remained until close to midnight. During this meeting, Mr. Dunn and the minister completed their discussion about Morgan Grenfell's possible advisory role, and the minister requested that the bank send a submission to him in Ottawa. Mr. Dunn agreed to ask his colleagues in London to do so.

Mr. Dunn testified that near the end of this meeting the minister raised the entirely separate matter of one of his wife's business interests. The minister produced either a corporate brochure or financial statement indicating that his wife had certain business interests involving a company with offshore oil rights in the Canadian Arctic, in either the Bering or Beaufort seas. The minister asked if Morgan Grenfell might be able to find anyone interested in taking an equity stake in this company. In due course, Mr. Dunn forwarded this corporate document to London to be examined by Morgan Grenfell's Energy Group. Subsequently, he was advised that the matter was not of interest to Morgan Grenfell.

Evidence indicates that Phil Evershed was present for part of this late night meeting and, further, that while he was present he neither heard the minister's remarks about "his wife's business interests" nor saw Mr. Stevens give Mr. Dunn a brochure. Mr. Dunn recalled that when he spoke with Mr. Stevens about Mrs. Stevens' business interests, Mr. Evershed was not present. Mr. Evershed testified that he made between two and four phone calls during this time of no more than 10 to 15 minutes each; they were placed from a separate area in the hotel suite where he could neither hear nor see Mr. Dunn and the minister. As a result, Mr. Evershed, whose memory was unclear, may have been absent for as much as an hour.

Mr. Stevens had no explanation of the events in issue. He testified that he could not recall meeting Mr. Dunn at the reception held at the Canadian high commission and did not recall meeting with him at his hotel room in the presence of the Canadian high commissioner and others to discuss privatization. Further, Mr. Stevens denied any conversation about his wife's business interest later that evening.

Morgan Grenfell was never engaged by the Canadian government to perform any services in relation to privatization or inward investment.

Conclusions

I accept the evidence of Mr. Dunn. He testified in a clear and forthright manner. Unless he was deliberately fabricating his testimony, a suggestion that counsel for Mr. Stevens does not make, Mr. Dunn's knowledge of certain uncontroverted facts, for example, Mrs. Stevens' oil and gas business interests in the Beaufort Sea, is strong evidence that the discussions took place as he described.

Mr. Stevens' recollection of the incident was, by his own admission, very vague. Further, before it was established that Mr. Dunn would come to Canada to give evidence to the Commission, Mr. Stevens described Mr. Dunn in highly uncomplimentary terms. He testified as follows:

> Q. Do you recall a meeting in Singapore with somebody by the name of Angus Henry Dunne of Morgan Grenville [sic]?
> A. I am very vague on it. I remember who I think this fellow is, and the main thing, to be frank with you, I remember about him is he had very long hair and long fingernails.
> Q. Longer than mine?
> A. Very much.
> . . . .
>
> It was a disappointing meeting in that it is one of those meetings where you sit there wondering "how did I get stuck with this guy." It was late at night, and maybe I was overly tired or something, but Phil Evershed, my personal assistant, was there. He has been the one that I have asked, "can you recall for me this meeting," and as it turned out, to get rid of him, I suggested that — he said that he had a lot of information he wanted to give me, and this type of thing, and I said "why do you not get whatever you would like to give me and give it to my assistant," and Phil Evershed met with him the following day.
>
> (Transcript, vol. 70, pp. 12,093–94)

This evidence is important because it became apparent when Mr. Dunn gave evidence to the Commission that Mr. Stevens' characterization of his appearance and demeanour was wholly inappropriate and misleading. Mr. Dunn, who testified that he had not altered his physical appearance since meeting with Mr. Stevens, could be described only as a conventional English businessman. Further, Mr. Stevens, in response to questions by Commission counsel, persistently refused to give his own recollection of this incident, putting forward instead Mr. Evershed's version of events. When Mr. Evershed testified, however, he did not support important aspects of Mr. Stevens' testimony. In particular, Mr. Stevens' assertion that Mr. Evershed was present throughout the evening with Mr. Dunn was not confirmed. I reject Mr. Stevens' testimony that private business matters were not discussed in the meeting with Mr. Dunn.

Mr. Stevens' conduct with Mr. Dunn is evidence of his knowledge of and involvement in management activities within the York Centre group of companies. More specifically, there is no doubt that Mr. Stevens on this occasion was endeavouring to obtain financing for Canalands or Sentry. When considered in conjunction with the first meeting with Mr. Leiderman, this conduct further confirms that in March 1985 Mr. Stevens was aware of the need for money for the York Centre companies. This incident is also an example of Mr. Stevens' mingling of private business matters and public business, a matter that will be dealt with later in this report.

Chapter 13

The Approach to Tom Kierans of McLeod Young Weir

McLeod Young Weir is a large Canadian investment house that had for some time acted for York Centre, Georgian Equity, and Georgian Trust in the purchase and sale of strip bonds, coupons, and shares. Alex Lutsky was the registered representative of McLeod Young Weir who had handled these transactions. Prior to October 1984 Mr. Lutsky dealt with Mr. Stevens, but after Mr. Stevens' appointment to the cabinet Mr. Lutsky's contacts were with either Mrs. Stevens or Miss Walker.

Description of Events

On July 31, 1985, Mr. Tom Kierans, president of McLeod Young Weir, had a luncheon meeting with Mr. Stevens to discuss government business. The lunch was held at the minister's CDIC office and lasted about one-and-a-half hours. The topic discussed was a proposed Atlantic Development Fund. These discussions were of a preliminary and general nature, with Mr. Stevens endeavouring to obtain Mr. Kierans' views on how to find the necessary funds using exchangeable debentures and exchangeable preferred shares. The whole program had yet to be approved by cabinet. Mr. Stevens promised to provide a copy of the Atlantic Development Fund proposal so that Mr. Kierans might review it. This document was subsequently provided. At this meeting there was no discussion of the particular role that McLeod Young Weir might play in this initiative.

Mr. Kierans testified that, at the end of the meeting, Mr. Stevens turned to the unrelated subject of strip bonds. Mr. Stevens outlined the problems and possible solutions involved in funding a portfolio of coupons and bonds and told Mr. Kierans that these conceptual problems were currently being dealt with by his wife, Noreen Stevens. The minister then asked Mr. Kierans to give the matter some thought with a view to meeting with Mrs. Stevens and advising her on an appropriate course of action. During this discussion, there was no mention of any specific bonds or companies.

Mr. Stevens denied that the matter of strip bonds was raised by him. He said it was raised by Mr. Kierans at the beginning of the meeting in the context of acknowledging McLeod Young Weir's short-sightedness in failing to take up Mr. Stevens' idea about strip bonds in the early 1980s. Further, Mr. Stevens denied that he discussed the problems of funding a portfolio of coupons and bonds with Mr. Kierans or that he asked him to meet with Mrs. Stevens to advise her. Mr. Stevens said he made a passing remark that the York Centre group was still active in the field of strip bonds and that Mr. Kierans might wish to call Noreen Stevens or she might wish to call him to discuss them generally. In cross-examination, Mr. Stevens said that, in response to his remark that Mrs. Stevens continued her involvement with strip bonds, Mr. Kierans offered to help in any way he could. Mr. Stevens testified that he later told his wife that Tom Kierans had offered assistance to her "stripped bond type of concept work" (Transcript, vol. 73, p. 12,637).

On August 1 or 2, 1985, Mrs. Stevens called Mr. Kierans and arranged to meet him at 10:00 a.m. on August 6 at his office. During this brief telephone call, according to Mr. Kierans, Mrs. Stevens explained she had a "conceptual problem" pertaining to a bond portfolio with which she was involved. She made no reference to any meeting or discussion which Mr. Kierans had had with her husband. Mr. Kierans testified that his July 31 meeting with Mr. Stevens did not pave the way for his meeting with Mrs. Stevens. He said that, because of the value of the portfolio of bonds being discussed, he would have met with her even if she had called without any introduction.

On August 4 Mr. Stevens called Mr. Kierans, wanting to meet with him to discuss the possibility of Mr. Kierans' appointment as deputy minister. August 4 was a Sunday and Mr. Kierans was not able to meet him. As a result, a meeting was scheduled for August 6, 1985. Mr. Stevens testified that officials of his department had told him that Mr. Kierans was a candidate for the position of deputy minister and that Mr. Kierans was extremely interested in the position.

On the morning of August 6 Mr. Kierans met Mrs. Stevens at his office. During their short meeting they discussed a large portfolio of strip bonds, held by a company in the Turks and Caicos Islands, having a face value of between $14 and $17 million. Mrs. Stevens wanted to raise money on the portfolio, and explained that she had a potential offshore source of funding, perhaps in Switzerland. Her question was whether provision could be made for the loan to accumulate in principal value until the maturity date of the bonds, when the loan could be repaid. In the period between the date of the loan and the maturity date, there would have to be little cash drain. Mrs. Stevens left the portfolio with Mr. Kierans so he could assess the financing strategies for her.

During this meeting, Mrs. Stevens gave Mr. Kierans the impression that the bonds in question were held in a company in which she had management involvement and that she was in charge of receiving advice and directing the disposition of the bonds. Mr. Kierans testified that he had no knowledge beyond this and had no information that they were part of "family-related portfolios" (Transcript, vol. 49, p. 9004).

On the same day, Mr. Stevens met Mr. Kierans for lunch, and they discussed whether Mr. Kierans would consider becoming a deputy minister of DRIE or having some other senior association with the department. Mr. Kierans said he would have to consider the matter. Subsequently, he declined to leave the private sector.

Mr. Kierans later discussed the problem raised by Mrs. Stevens with one of his colleagues, Gordon Cheeseborough. Mr. Cheeseborough discussed it with his colleague, Tony Woodward. Both Mr. Woodward and Mr. Cheeseborough examined the portfolio and eventually advised Mrs. Stevens that there was "too much exposure" and that she would be well advised to liquidate the portfolio. At the same time, McLeod Young Weir referred Mrs. Stevens to an outside consultant. Mr. Kierans then telephoned Mrs. Stevens on August 7 or 8 to report the company's preliminary view that the risk profile of the portfolio was excessive and the bonds should be put up for sale.

Mrs. Stevens testified that her husband suggested she call Tom Kierans to see if he could help with her "problem with the [F]irst Interstate type of application" of strip bonds (Transcript, vol. 67, p. 11,424). (The First Interstate Bank of Canada proposal was prepared by Richardson Greenshields in the early summer of 1985; it was an effort to borrow $10 million from this bank for York Centre, using the Ontario Hydro strip bonds as security.) Mrs. Stevens denied that she was aware that Mr. Kierans was expecting her to call. Further, she said that although it was possible that what she discussed was in fact the Georgian Trust portfolio, she used it only as an example in the context of the more abstract issues presented by the First Interstate Bank proposal and by the problems of raising money using a bond portfolio. She could not recall any details of the discussion, the meeting with Mr. Cheeseborough, being referred to a consultant, or being told to sell the bonds. She testified that she could only recall the meeting with Mr. Kierans vaguely and that "if it was anything . . . [it] dealt again with the concept of the stripped bond and its application to financing" (Transcript, vol. 62, p. 10,646).

On August 15, 1985, the bonds held by Georgian Trust were sold to Gordon Capital for $2,783,092. McLeod Young Weir had been asked a few days earlier to bid on the bonds, which it did. Its bid was not accepted. A colleague of Mrs. Stevens dealt with McLeod Young Weir in matters pertaining to the bid. Mrs. Stevens testified that she did not make the decision to sell the Georgian Trust portfolio, but she was equivocal about her knowledge of the sale. She first testified that it was possible she knew the sale occurred in August 1985 but could not say whether she knew it occurred on the specific date of August 15, 1985. When reminded of her role in arranging the overnight loan of $1,216,635 from the Bank of Montreal, which facilitated the sale of the bonds, Mrs. Stevens testified she was generally aware of the transaction. Subsequently, however, Mrs. Stevens denied on two occasions that at the time she had had knowledge the bonds were to be sold.

On the issue of knowledge, it is important to note that Mrs. Stevens received $47,162.18 from Stevens Securities and $7,467.04 from Gill as part of the distribution of proceeds from the sale. These sums were owed to Mrs. Stevens by the companies. Mrs. Stevens testified that she recalled, but not in any detail, receiving these funds. During her testimony Mrs. Stevens had difficulty answering certain questions, but undertook to the Commission to check her records and provide such answers, in writing, if they were available. In response to one such undertaking, Mrs. Stevens confirmed that "[n]o other sums of money of the same magnitude were received from either Gill Construction or Stevens Securities Limited between 1984–86" (Exhibit 230, tab 1, p. 6).

Mr. Stevens testified that he had no knowledge of his wife's meeting with Tom Kierans on the morning of August 6, 1985. Further, he had had no discussions with his wife before or after this meeting about strip bond activities, financing a bond portfolio, or problems relating to strip bonds, except in relation to how to structure a strip bond in conjunction with a coin or other commodity so as to avoid tax on accrued income. Further, Mr. Stevens denied any knowledge of the sale of the bonds, including McLeod Young Weir's bid on the Georgian Trust bonds.

During this same time frame, Mr. Stevens held other discussions with Mr. Kierans about government matters. As a matter of convenience the nature of these discussions and Mr. Kierans' response will be dealt with in Chapter 23, which deals with the allegation that Mr. Stevens mingled public and private business.

Conclusions

I accept the evidence of Tom Kierans. He had a clear recollection of the circumstances surrounding his contact with Mrs. Stevens and he had no interest in the outcome of these proceedings. Mrs. Stevens, by her own admission, had only a very vague recollection of the events and was not able to describe with any certainty or in any detail the conversation she had with Mr. Kierans.

The evidence of Mr. Kierans, when considered in the context of York Centre's search for forms of financing which would produce little cash drain for the companies, establishes that Mrs. Stevens' "conceptual difficulty" related directly to York Centre's need to raise money and its desire to use the portfolio of bonds held by Georgian Trust to do so. The specific commercial character of these difficulties is made abundantly clear by the fact that, a few days after her contact with Mr. Kierans, the very portfolio of bonds discussed with him was sold. Further, I find that Mrs. Stevens was aware of the sale of the bonds at the time it occurred. Her involvement with the First Interstate Bank proposal (which could no longer be implemented as a result of the sale of the bonds), her involvement in arranging the overnight loan to facilitate the sale, and her receipt of proceeds from the sale is evidence of her knowledge.

Mr. Stevens denied he had discussions with his wife concerning the use of strip bonds as a vehicle for financing. He gave the following evidence:

> Q. The question is: What conversation had you had prior to this lunch with Mrs. Stevens about stripped bond activities, problems or otherwise?
>
> A. Nothing, other than the fact she had talked with me in a general way about the type of thing that we ended up discussing with Chase Manhattan, if you like, the McCarthy & McCarthy interpretation of how you can structure a stripped bond in conjunction with a coin or another commodity and end up in a tax-avoidance position.
>
> Q. Did you discuss with her, Mr. Stevens, prior to speaking to Mr. Kierans or any time, conceptual problems of raising funds utilizing stripped bonds?
>
> A. No, not in the context of when you say "raising funds," not in that context. The context that we discussed was, having come up with the idea of a stripped bond, now being faced with the fact that they are taxable every three years — before going into the Ministry, I tried to work out a new approach as to how you could use a stripped bond but avoid tax.
>
> It was in that context that my discussions with Noreen took place.
>
> Q. Did she tell you that at that very moment, whoever's idea it was, whether it was yours or Mr. Kierans', she was engaged on behalf of the York Centre group in attempting to develop a method of raising capital utilizing stripped bonds?
>
> A. No.
>
> Q. Did she tell you anything about First Interstate and the approaches she had made to First Interstate?
>
> A. No. Until, at this hearing, the name was raised, I did not even know that there was such a bank active in Canada.
>
> Q. So, do I understand correctly that you are saying she did not put any problem, conceptual or otherwise, to you that would have caused you to raise this with Mr. Kierans? Is that right?
>
> A. In reference to the raising of finances?
>
> Q. Yes.
>
> A. That is correct.
>
> (Transcript, vol. 73, pp. 12,637–39)

I find that this evidence conflicts with the evidence given by Mrs. Stevens, who testified that her husband suggested she call Mr. Kierans to see if he could help with her "problem with the [F]irst Interstate type of application" (Transcript, vol. 67, p. 11,424).

I reject Mr. Stevens' evidence in light of Mrs. Stevens' testimony about her husband's knowledge. Further, I find that Mr. Stevens was aware of the approach made by Mrs. Stevens to Mr. Kierans and of the First Interstate Bank proposal, which involved using strip bonds to obtain financing.

Mr. Stevens' evidence also conflicts with that given by Tom Kierans in a number of important areas, including whether Mr. Stevens asked Mr. Kierans to see his wife. Mr. Stevens denied he made such a request.

I reject Mr. Stevens' evidence and find as a fact that he did make such a request to Mr. Kierans. I further find that this request not only demonstrates a significant degree of involvement in the continuing affairs of the York Centre group of companies, but also discloses a willingness on the part of Mr. Stevens to use his public office and his wife's name and interests to secure access to individuals and acquire financial advice directly related to the problems faced by the York Centre companies. This conduct was part of a pattern which became increasingly evident during the course of this Inquiry. This pattern involved the minister making an initial contact ensuring access, with Mrs. Stevens then seeking specific advice or assistance.

Chapter 14

The Call to Ken Leung of Olympia & York

Mr. Ken Leung is the senior vice-president, finance and administration, of Olympia & York. In the discharge of his duties, which extend to arranging financing for the company, Mr. Leung reports directly to Albert and Paul Reichmann.

Description of Events

Some time in early August 1985, Mr. Leung received a telephone call from Mr. Stevens. Prior to this phone call Mr. Leung had never met or spoken with the minister. Although Mr. Leung could not recall the details of the conversation, he indicated that the minister inquired whether or not he would mind if Mrs. Stevens contacted him for some advice. Mr. Leung assumed that the minister was referring to his wife; he recalled that the matter he anticipated discussing with Mrs. Stevens was of a financial character.

Subsequently, Mrs. Stevens and Douglas Coyle, a young computer analyst, met with Mr. Leung on or about August 7, 1985, at his office. Mrs. Stevens testified that the subject of the meeting was whether strip bonds could be used to finance real estate limited partnerships. Both Mrs. Stevens and Mr. Leung described the meeting as brief, Mr. Leung being unable to provide any useful advice. Mr. Leung had no other dealings with Mr. Stevens, Mrs. Stevens, or Mr. Coyle.

Mr. Leung testified that although he was personally uninvolved in the dealings that Olympia & York had with the government in 1984–85, he was aware of them in August 1985. Throughout the 1984–85 period the federal government was trying to further Canadianize the petroleum industry. In particular, the government sought to assist Olympia & York in acquiring Gulf Canada Corp. from its U.S. owners. Mr. Stevens was one of the intermediaries between Olympia & York and the federal government in this effort. Later he became involved with Olympia & York in its dispute with Allied Lyons over a proposed takeover of Hiram Walker. In this matter, Mr. Stevens was acting in his capacity as minister responsible for Investment Canada. The policy in this area was not set by Mr. Stevens personally but by the cabinet.

Mr. Stevens testified that he knew of Mr. Leung, by reputation only, as a senior executive at Olympia & York. He had no recollection of any telephone conversations with Mr. Leung and, further, could not identify any reason that would have caused him to call Mr. Leung.

Mrs. Stevens did not know specifically how she came to meet with Mr. Leung, although she conceded someone must have made the introduction. Mrs. Stevens testified that she was generally aware from news reports that Olympia & York was involved with the Canadian government, specifically DRIE, over Gulf Canada.

Mrs. Stevens also testified that her husband was aware of the conceptual difficulty she was having with strip bonds, which included in part the problems of using a portfolio of bonds to raise money. Further, she indicated that one example of this problem was reflected in the First Interstate proposal.

Conclusions

Mr. Leung, a respected member of the business community, was a straightforward witness with no interest in the outcome of these proceedings. Although his recollection of events surrounding this incident was not detailed, I am satisfied that his description of the telephone call from the minister is accurate. Given the absence of association between Mr. Leung and the minister, the call would be at least unusual.

In contrast, Mr. Stevens testified as follows:

> A. I cannot recall phoning Mr. Leung. I have tried to refresh my memory as to why I would have called him, and I have drawn a complete blank on it.
>
> Q. I take it you have nothing to offer in terms of why Mr. Leung would say that if it had not occurred.
>
> A. I have never met the man, Mr. Scott.
>
> (Transcript, vol. 73, pp. 12,651–52)

In these circumstances I accept the evidence of Mr. Leung. Further, I find that Mr. Leung's willingness to meet with Mrs. Stevens was communicated to her by Mr. Stevens. Mrs. Stevens, on her own admission, would not have contacted Mr. Leung without an introduction.

As well, given the context of the activities of Mrs. Stevens during July and August 1985 in relation to York Centre's search for financing, including her meeting with Mr. Kierans, it is clear that Mrs. Stevens' contact with Mr. Leung was part of her effort to utilize the bonds held by Georgian Trust as a vehicle for financing. I find that Mr. Stevens discussed with Mrs. Stevens her efforts with both Tom Kierans and Ken Leung to use the bonds in this manner. This conclusion is strengthened by the improbable coincidence that Mr. Stevens would have assisted in arranging appointments for his wife on these consecutive days in early August without any knowledge of their purpose. Mr. Stevens' involvement with these incidents leads inescapably to the conclusion that he was aware of his wife's efforts, their failure, and the subsequent decision to sell the bonds, one of the most important assets of the York Centre group. This conclusion is entirely consistent with Mr. Stevens' extensive involvement in the Georgian companies prior to entering cabinet in September 1984 and with his efforts several months after the sale of the bonds to develop the Christ coin proposal to revitalize the companies.

Finally, as in the meeting with Mr. Kierans, Mr. Stevens' conduct on this occasion further evidences a willingness to open doors for his wife in order for her to obtain financial advice for their companies.

Chapter 15

York Centre Group Financial Materials Found in the Minister's Office

The Commission also heard evidence about certain York Centre group financial materials that were found in the minister's office. Ms. Aline Charlebois testified to this effect. Ms. Charlebois, a government employee, worked as the minister's private secretary after he became a member of the cabinet in September 1984. She was primarily responsible for coordinating his daily schedule, bringing forward correspondence for him to sign, filing documents, and in general keeping track of the paper flow in the minister's office. She also answered telephone calls directed to the minister.

Description of Events

It was the minister's custom to travel to Toronto three or four times a month, generally on Friday, to work out of his office at CDIC. When he returned to Ottawa on Monday, Ms. Charlebois, as part of her duties, would go through his briefcase and pick out documents for filing or for passing on to his special assistants. It was after one such trip during the first few months of his tenure in office that Ms. Charlebois removed a York Centre Corporation annual report from his briefcase. On first seeing this document, she asked Mr. Phil Evershed if she should keep it. She was informed that it was of "interest to the Minister," and, as a result, she opened a file on York Centre Corporation (Transcript, vol. 14, p. 2060). Mr. Evershed testified that Ms. Charlebois approached him with a variety of corporate financial statements — he did not recall the names — and he simply told her to file them.

Ms. Charlebois testified without the aid of the file marked "York Centre Corporation," which was subsequently produced from the minister's office. She described removing annual reports or financial statements from his briefcase on three to five occasions, spread out over the time Mr. Stevens was minister. She described these documents as pertaining to York Centre, Gill, Canalands, Sentry, and one of the Georgian companies. She also saw some documents — she was unaware of their nature — relating to Royal Cougar. Ms. Charlebois testified that some of this material was kept in the York Centre file but that the annual reports were stacked with other annual reports received by the minister's office.

On May 13, 1986, within 24 hours of the minister's resignation, Ms. Charlebois sent a number of York Centre Corporation annual reports to Mr. Stevens' Parliament Hill office. Those documents were received by Ms. Marian Guilfoyle, his assistant, and almost immediately forwarded to York Centre Corporation, care of Ms. Alice Patry, Noreen Stevens' secretary.

On July 2, 1986, after the cabinet shuffle and the appointment of a new minister of DRIE, Ms. Charlebois packed up the minister's files, including the file marked York Centre Corporation, and forwarded them to Ms. Guilfoyle. The York Centre file was stored by Ms. Guilfoyle until it was made available to the Commission. This file included the following documents:

- Canalands Resources Corporation, Annual Report, 1985;
- Canalands Resources Corporation, Interim Financial Report, 6 months ended December 31, 1985;
- Georgian Trust and Life Assurance Company Limited, Financial Statement, ending March 31, 1985;
- Gill Construction Limited, Financial Statement, for year ending March 31, 1985;
- Gill Construction Limited, Auditor's Report, dated June 14, 1985, marked "Draft, for Discussion";
- Sentry Oil & Gas Corp., Annual Report, 1984;
- Sentry Oil & Gas Corp., Annual Report, 1985;
- Sentry Oil & Gas Corp., Interim Financial Information, 6 months ended December 31, 1985;
- York Centre Corporation, Annual Report, 1985.

On the same occasion, Ms. Guilfoyle also received from the minister's office a blue file folder, entitled Clady Farm, which contained magazines on breeding cattle and other sundry financial information. Included was a spreadsheet of intercorporate debt dated April 4, 1986, which dealt with the York Centre group of companies, and a letter dated September 28, 1984, prepared by Mr. Rowe and discussed at length in Chapter 6 of this report.

During his term of office the minister never asked Ms. Charlebois to produce the York Centre Corporation file, any of the financial statements, or the annual reports.

Mr. Stevens denied ever knowingly receiving these financial statements or being aware that his secretary had opened a file on York Centre. Mr. Stevens speculated that he may have been on a shareholders' list, which resulted in these documents being sent to him; he offered no explanation of how they could have been placed in his briefcase.

Mr. Stevens denied any knowledge of how the spreadsheet of April 4, 1986, might have got into his file. Although it was identical to the spreadsheet of debt discussed at the meeting with York Centre Corporation auditor, Mel Leiderman, on April 16, 1986, Mr. Stevens said he doubted he would have taken it from the meeting.

Conclusions

I accept the evidence of Ms. Charlebois and Ms. Guilfoyle and find that the documents relating to the York Centre companies located in the minister's office were indeed documents carried by the minister from Toronto to Ottawa. Further, I find that these documents were acquired by him on three to five different occasions spread over the period of his tenure in office.

When asked for an explanation about his possession of these documents and how they may have come to be placed in his briefcase, Mr. Stevens was not helpful or persuasive. He testified as follows:

> Q. You cannot, I take it, identify, or can you, anyone who would have put these documents in your briefcase other than yourself.
> A. And I did not do it.
> Q. Can you give us the name of somebody else, sir?
> A. Anybody could. You could have.
>
> (Transcript, vol. 72, p. 12,530)

This was one of two occasions on which the minister suggested that Commission counsel might have placed the documents in his briefcase. When viewed in the context of the minister's duty to safeguard his briefcase, which may contain highly confidential government documents, these answers are at best glib and evasive.

When pressed as to who would have had sufficient access to his briefcases to place such material in them, Mr. Stevens identified a number of his Ottawa staff as well as Mr. Ted Rowe. In fact, none of the staff named had any connection with York Centre or the other companies. Mr. Stevens ultimately agreed that it was also unlikely that Ted Rowe put such documents in his briefcase. In contrast, when asked whether Shirley Walker or his wife might have placed them in the briefcases — both of whom are individuals with relatively easy access to the minister's briefcase — the minister excluded them as possibilities. In giving this testimony, Mr. Stevens, I find, was not forthright.

Further, I reject Mr. Stevens' assertion that he had no knowledge of these documents. I find that his possession of this financial documentation relating to the York Centre group of companies was with full knowledge of their existence and their contents. The volume of documents, the numerous occasions on which they were found, and the fact that they were found in his briefcase upon his return from Toronto all are evidence of this. As well, it is significant that some of these documents, one even in draft form, related to corporations, including Gill, that were not public.

These facts give rise to only one conclusion when considered in conjunction with his conversations with Mr. Leiderman about the draft financial statements for Georgian Trust, his meetings of March 16, 1985, and April 13, 1986, with Mr. Leiderman, and his other involvements with York Centre described elsewhere in this report. Mr. Stevens' possession of these documents is evidence of his continued interest and involvement in York Centre Corporation and its related companies' financial affairs.

Chapter 16

The Meeting with Ron Graham

The Commission also heard evidence about a meeting that Mr. Stevens had with Mr. Ron Graham on May 2, 1986. Ron Graham is a consultant who specializes in real estate and mortgages. He first came into contact with both Mr. and Mrs. Stevens in 1982–83 when he advised them on the formation of Royal Cougar and subsequently took a minority stake in the company. In 1985 he was a director of Royal Cougar. Mr. Graham described Mr. Stevens as responsible for the idea behind Royal Cougar and for the formation of the company. He said Mrs. Stevens gave legal advice but was not involved in discussing the founding of the company.

Mr. Graham was also involved in the real estate activities of the companies. In 1983 he "assisted [Mr. and Mrs. Stevens] in obtaining some mortgage financing on their real estate" from Guaranty Trust (Transcript, vol. 55, p. 9990). (This was the loan to Cardiff Construction referred to in Chapters 6 and 7.) He subsequently sold a mortgage for Cardiff Construction and advised on several sales. From September 1984, when Mr. Stevens became a minister of the Crown, to April 1986, Mr. Graham had no further business dealings as a real estate consultant with anyone at York Centre. He did have one or two informal conversations with Mrs. Stevens about refinancing the real estate portfolio or the sale of parts of it.

Description of Events

At the end of April 1986 Mr. Graham read several newspaper articles critical of the "interest-free" mortgage received by Cardiff from Anton Czapka. As a result of reading these articles, Mr. Graham called Mrs. Stevens and indicated that, depending upon the underlying asset value and cash flow, he might be able to sell the properties at a profit. Mr. Graham could not recall the response he received, but the matter was not pursued at that time.

Mrs. Stevens informed her husband of the call and, shortly thereafter, Mr. Graham was telephoned by Miss Walker, who indicated that Mr. Stevens would like to see him. An appointment was arranged for

2:00 p.m. on May 2, 1986, at the minister's CDIC office. At this meeting, Mr. Stevens expressed concern about the conflict of interest allegations that were appearing in the press and concern for Mrs. Stevens, saying he felt strongly that she was being unnecessarily abused. Mr. Stevens said his wife felt the allegations singled her out as the source or cause of the conflict. Mr. Stevens then asked Mr. Graham if he would consider replacing her in some form or other in the discharge of her responsibilities at York Centre and its various subsidiaries or interests. Mr. Graham responded that, prior to making any commitment, he would want to review the status of the companies, including their financial position, to see if he could be of any real assistance. Mr. Stevens indicated that the financial information Mr. Graham wished to see would be provided and that, if Mr. Graham were interested, a further meeting with Don McPhail and Mel Leiderman would be set up. (At this time Mr. McPhail was a director of York Centre, Gill, and Canalands as well as vice-president of Gill.)

Later that afternoon, Mr. Graham received a complete set of annual reports and financial statements, including interim financial statements, for Canalands, Sentry, and York Centre from 1983 on. Mr. Graham passed these documents to one of his associates, David Sears, to review. However, his office received a phone call from Mr. Stevens on May 5, 1986, indicating he should not proceed until he heard further from Mr. Stevens. Mr. Stevens testified that he asked Mr. Graham to stop work on the project because he realized he was not supposed to be speaking to him about matters involving the ongoing direction or management of these assets.

Conclusions

Mr. Stevens testified that he could not recall providing any financial information to Mr. Graham. However, Mr. Graham's evidence that Mr. Stevens did provide such information was confirmed when he produced a file during his testimony containing some 27 financial reports. These were received a few hours after his meeting with Mr. Stevens. I also accept Mr. Graham's evidence that Mr. Stevens asked him to replace Mrs. Stevens. Although Mr. Stevens could not recall making such a request, even Mrs. Stevens recalled that her husband had spoken to Mr. Graham and discussed replacing her in the role she was then playing. Further, I reject Mr. Stevens' assertion that he believed his wife's role was confined to that of a solicitor to the companies. It is obvious that the request made to Mr. Graham, a non-lawyer, was not to take over his wife's role as a solicitor but rather her role in the management of the companies.

Further, I find that Mr. Stevens' acknowledgment that he should not be involved with any of the companies is an admission that he was aware that he was not to have any dealings with the affairs of Gill, as well as the affairs of Sentry, Canalands, or York Centre.

This concludes my analysis of the evidence as it pertains to Mr. Stevens himself and the incidents of his involvement in private business matters while he was a minister of the Crown. I now turn to the role that was played by Miss Walker.

Chapter 17

The Role of Shirley Walker

Nature of Role

Shirley Walker was a trusted aide and employee of Mr. Stevens for over 20 years. She joined British International Finance (Canada) Limited (later York Centre) in the 1960s. Within two years she had become Mr. Stevens' administrative assistant, and continued as such until 1979. By then she was also a corporate officer in many companies associated with York Centre. In 1979, in the newly elected Clark government, Mr. Stevens became a member of cabinet as president of the Treasury Board. At this time, Miss Walker resigned all her positions in these companies and began to work as a Toronto-based assistant to Mr. Stevens. She was to provide liaison between interest groups in Toronto and the minister's Ottawa office. She was the only member of the minister's staff based in Toronto, and she continued to work in her private office at York Centre. After the defeat of the Clark government in 1980, Miss Walker resumed her positions with the companies.

Prior to October 1984

Prior to October 1984, Miss Walker was a director or officer of a substantial number of the York Centre group of companies. Her positions are outlined in the text of Chapter 5 and in tables 5.1, 5.2, 5.3, 5.4, and 5.5. Miss Walker's day-to-day role was characterized as that of an executive assistant with both managerial and secretarial responsibilities for the York Centre group of companies. She reported to Mr. Stevens and, when he was not available, to Mr. Rowe. She was involved in numerous financial transactions within the York Centre group, including setting up loans and payments between the companies. In some instances she proceeded without instruction, and she had general authorization from Mrs. Stevens to administer Georgian Equity. She was also involved in buying and selling bonds and did some work for Philip MacDonald of Royal Cougar.

Miss Walker had responsibility for the day-to-day banking of the York Centre group of companies, but her responsibilities extended beyond ensuring that interest payments were made on time. In the summer of 1983 she accompanied Mr. Stevens and Mr. Rowe on two occasions when they met with CIBC officials to discuss the reduction of York Centre's indebtedness to CIBC through loans from the Hanil Bank and Guaranty Trust; they also discussed what might be used as security for the loans. Throughout the spring and summer of 1984 she was in communication with CIBC officials by telephone and correspondence about loan margins, appraisals for Cardiff properties, and the postponement of CIBC's charges over various properties to accommodate a further advance from Guaranty Trust to York Centre. With regard to Hanil, Miss Walker signed, as a corporate officer, essential documents to facilitate its 1983 loans to Cardiff, YCPL, and Gill. She co-signed the loan documents for Gill with Sinclair Stevens. In the summer of 1984 Miss Walker negotiated with the National Bank of Canada for a $355,000 line of credit for Stevens Securities (detailed in figure 5.6). Mr. Stevens personally guaranteed this loan.

From July 1983 Miss Walker, as well as Sinclair Stevens, was authorized by Georgian Equity to trade on its behalf using its margin account at McLeod Young Weir. Miss Walker corresponded with the brokers, and the trading reports from McLeod Young Weir for this account were directed to her attention both before and after October 1984. (After October 1984 Mr. Stevens was no longer in communication with the McLeod Young Weir traders.) On July 19, 1984, Sinclair Stevens opened a margin account at Dominion Securities for Stevens Securities; both Mr. Stevens and Miss Walker were authorized to trade on this account.

The accountants and auditors for the York Centre group of companies relied on Miss Walker for information. She was closely involved with producing the quarterly financial statements of the various companies, in the preparation of annual tax returns, and in filings for the securities commissions. She assembled materials for the annual meetings of the companies, looked after the printing of these materials and the compilation of the shareholders' lists, and ensured that the mailings were completed. As Mrs. Stevens testified, Miss Walker was resourceful, knowledgeable, and experienced in obtaining information.

The importance of Miss Walker's role at York Centre is also illustrated by her attendance, along with Mr. Mollard, Mr. Rowe, and Mr. and Mrs. Stevens, at the meeting on September 30, 1984. This meeting, which was dealt with in detail in Chapter 6, was called by Mr. Rowe to design strategy for dealing with the difficult financial problems then facing York Centre.

From the time she became his administrative assistant in the 1960s, Miss Walker handled all of Mr. Stevens' personal banking, eventually including payment of his personal bills and filing his income tax returns.

As Special Assistant, 1984–86

In October 1984 Miss Walker joined Mr. Stevens in government as his special assistant. She was based in Toronto and initially continued to work out of her York Centre office, as she had done in 1979. In February 1985 she obtained offices at DRIE, and later at CDIC, in First Canadian Place in Toronto.

As special assistant to the minister she was to provide liaison between Toronto-area people and the minister's office in Ottawa. Mr. Stevens indicated that her chief function was to deal with people who wanted to talk to him about specific problems. Miss Walker testified that people in the Toronto business community knew that, if they were unable to contact Mr. Stevens, they could contact her. Her duties included gathering information, meeting people, and arranging meetings. She looked after Mr. Stevens' appointments when he came to Toronto to work out of his CDIC office. Persons wishing to see the minister or to get information to him in Toronto would go through Shirley Walker.

Beyond general liaison, Miss Walker had specific areas of responsibility. She was responsible for coordination between Toronto and Ottawa federal officials on the Ontario Economic Redevelopment Agreement (ERDA), which involved keeping herself informed, organizing meetings, and supervising the paper flow. She was also heavily involved in organizing Opportunities Canada. This event, which was held in March 1986 and was partially sponsored by the Government of Canada, brought together foreign investors and members of the Canadian business community. Miss Walker was on the board of directors and reported to Mr. Stevens on the progress in organizing the event. She also helped to coordinate the Toronto visit of Malcolm Baldrige, United States secretary of commerce, in 1985.

While Miss Walker was Mr. Stevens' special assistant, she continued to look after all his personal financial affairs. She discussed these matters with Mr. Stevens from time to time if she thought they were important. In this period, no one else managed these personal financial matters or was designated by Mr. Stevens to do so.

In keeping with her role as someone privy to Mr. Stevens' most personal dealings, Miss Walker acted as his agent with the ADRG in October 1984 in arranging compliance with the guidelines and in the establishment of his blind trust. Miss Walker also dealt with the ADRG on behalf of Mr. Stevens in 1986, when compliance with the code was required.

At York Centre, 1984–86

When Miss Walker joined Mr. Stevens' staff in October 1984, she was designated as being subject to the conflict of interest guidelines. She was therefore required to dissociate herself from the York Centre group of companies. On October 19 and 31, 1984, Miss Walker resigned as an officer and director of these companies. As there was no office available for her at the DRIE offices in First Canadian Place, she carried out her work as a special assistant to the minister from York Centre's offices in Commerce Court West, which were across the street, until mid-February 1985.

Although Miss Walker resigned her positions with the York Centre group of companies, Mr. Rowe testified that she continued to do many of the things she had previously done for these companies. In fact, on October 19, 1984, Sinclair Stevens appointed her a special signing officer for Stevens Securities. As late as June 1985, both Philip MacDonald and Viki Martin reported to Miss Walker the weeks when they would not be in the York Centre office. Throughout the period 1984–86, the York Centre group's accountants and auditors continued to use Miss Walker as their contact person. Miss Walker also continued to deal with the Hanil Bank, with the Standard Chartered Bank over the term deposits Georgian Trust had with that bank, and with the National Bank about its loans to Georgian Equity and Stevens Securities. She continued to handle Georgian Equity's margin account with McLeod Young Weir; its statements indicate trades in the shares of York Centre, Canalands, and Sentry through the fall of 1984 and during 1985. In addition, Mrs. Stevens testified that Miss Walker was an "expediter" on real estate sales, such as the sale to the 4 Square Gospel Church, and that in general in this period Miss Walker had "a lot of input in all these transactions" (Transcript, vol. 66, p. 11,371).

Even after Miss Walker moved into her office at CDIC, Mrs. Foulkes, the bookkeeper for the York group, frequently visited her there. Miss Juliette Toth, the receptionist at CDIC, testified that Mrs. Foulkes called Miss Walker at least once a day. Miss Walker also received phone calls at CDIC from Mrs. Stevens, Mr. Rowe, Mr. Neary, and the auditors and accountants.

Documents filed with the Commission show that Miss Walker did not dissociate herself after October 1984 from the affairs of the York Centre group of companies. These documents include books of cheques, sequentially numbered and all signed by her, for such companies as Gill, Stevens Securities, Georgian Equity, Georgian Trust, and YCPL, as well as letters by her to banks, trust companies, and brokerage houses. Miss Walker testified that she had signed all the cheques issued on behalf of Gill in this period. For the other companies, despite extensive disclosure, the Commission has found no cheques signed by anyone other than Miss Walker. Given this fact, in combination with the sequential nature of the cheques, it is a reasonable inference that Miss Walker in fact signed all the cheques for the other companies as well.

Documents also indicate that she was involved in making loans and payments among the York Centre group and was involved in a number of significant transactions involving the companies. The transactions relating to the August 1985 Ontario Hydro bond sale illustrate this involvement (see figure 6.2 for details of the transaction). As discussed in earlier portions of this report, YCPL, as agent for Georgian Trust, sold Ontario Hydro bonds (then held as collateral for the Hanil Bank's loan to YCPL) for the amount of $2,783,092 on August 15, 1985. To have the bonds released, Miss Walker, together with Mrs. Stevens, arranged with the Bank of Montreal for an overnight loan in the amount of $1,216,635; this amount was then used to retire the debt to the Hanil Bank, which permitted the release of the bonds and their subsequent sale. Miss Walker corresponded with the Bank of Montreal, the Hanil Bank, and Gordon Capital, the purchaser of the bonds, to arrange for the overnight loan and the release and sale of the bonds. Miss Walker signed all the cheques distributing the proceeds of the sale. As noted earlier, there is no satisfactory evidence indicating who ordered the bonds sold. Without suggesting that Miss Walker made this decision, it is illustrative of her capabilities that Mrs. Stevens, when asked whether Miss Walker was the author of this transaction, replied:

> I think you can make that assumption, but I would have to check with the auditors to verify it. If you are asking me "was Miss Walker capable of handling a bond transaction of this magnitude and of disposing of these funds," the answer is yes. She is an extremely capable person and she has had many years' experience in the bond market.
>
> (Transcript, vol. 65, p. 11,007)

In September 1985 Miss Walker arranged for Interior Trust to provide funds to Georgian Trust for the purchase of marketable securities. This credit facility was used to purchase a Federal National Mortgage Association ("Fannie Mae") residual in September 1985. On behalf of Georgian Trust, Miss Walker signed the loan agreement, a promissory note for $493,304.37, and the pledge of the Fannie Mae residual as collateral.

Miss Walker also issued capital dividend cheques to the shareholders of Gill on December 31, 1985. This transaction was recommended to Miss Walker for tax reasons by Mr. Bruce Buckley, the accountant. A Gill resolution dated December 30, 1985, signed by Mr. Mollard and Mrs. Foulkes, established the arrangement to pay out the funds. Miss Walker wrote cheques for $134,715.00 and $10,361.50, payable to Mr. Stevens, and deposited them into his bank account. That same day or the next, the "shareholders" loaned the funds back to the company. (National Trust was, of course, then the registered owner of Mr. Stevens' Gill holdings.) Miss Walker utilized a blank cheque signed by Mr. Stevens for her to use in carrying out his personal banking to make Mr. Stevens' loan to the company. In return, each of the "shareholders," including Mr. Stevens, was issued a promissory note executed by Gill.

A statement in the files of Gill regarding this transaction and identified by Miss Walker suggests that National Trust, the trustee of the blind trust, authorized the direct payment of this money to Mr. Stevens. Miss Walker conceded, however, that she had no written authority from National Trust for this transaction and she was unable to recall whether she had spoken to anyone at National Trust to obtain a verbal direction. Mr. Frank Moores of National Trust, who was then responsible for the administration of the trust, testified that he did not receive a call or message from Miss Walker at the time of the transaction, nor did he subsequently become aware of it. Further, Mr. Moores indicated that any decision regarding a transaction such as this would have been referred to a committee of perhaps half a dozen individuals. Miss Walker gave the following evidence about the transaction:

> Q. Did you understand that you could pay out a cheque and deposit money from Gill Construction into Mr. Stevens' account without doing it through the National Trust?
>
> A. I thought that I could facilitate this transaction, and I took it upon myself so to do.
>
> . . . .
>
> Q. Fundamentally, I gather, you simply ran Gill Construction; is that right?
>
> A. In this case, I certainly did make the decision to do this cheque-crossing activity.
>
> (Transcript, vol. 8, pp. 902, 904)

This transaction is illustrative of Miss Walker's role and the nature of the decisions she made.

The Diaries

The nature of Miss Walker's role and the degree of her involvement in the York Centre group of companies is best illustrated by her diaries covering the period in which she was a special assistant. These notebooks, some 26 in number and totalling 3148 pages, contain primarily two broad categories of information: detailed information relating to the affairs of the York Centre group of companies, and detailed information relating to the minister, his department, and his officials. It is significant that the first category — information relating to York Centre — is more extensive in the diaries than information about ministerial business.

Miss Walker wrote in these diaries while speaking to someone in person or on the telephone, when collecting information, when recording advice she was giving or receiving, as well as when making notes to herself. Miss Walker accounted for her receipt of this quantity of information by indicating that she had a "sympathetic ear."

The diaries were proven to be a written chronicle of the major events in the life of the York Centre group of companies from the fall of 1984 to the spring of 1986. They record details of York Centre's bank debts and margin ratios for bank debts, as well as interest payments, stock prices, intercompany transactions, telephone calls, messages, and notes of meetings. Some of these entries will be reviewed in detail. Through the course of the Inquiry these entries were shown to contain meaningful information capable of confirmation by independent evidence.

Without attempting an exhaustive list, the following events noted in Miss Walker's diaries were confirmed by independent evidence:

- the dinner on October 19, 1984, between Mr. Davies and Mr. and Mrs. Stevens;
- Mr. Eyton's approach to Mr. Keenan regarding financing for York Centre;
- real estate sales of the "4-Square Church," "Jelinek," and "Cummins" properties;
- the meeting between Mr. Stevens and Mr. Mollard on February 3, 1985;
- the sale in February 1985 of the B.C. Hydro bonds;
- reorganization proposals being considered in the spring of 1985;
- the meeting on February 27, 1985, between Mr. Stevens and Mr. Reeves of Morgan Grenfell, a merchant banker, in London, England;
- the meeting of Mr. Stronach with Mr. and Mrs. Stevens on March 24, 1985;
- the Czapka loan;
- the development and sale of the limited partnership units in the "Equion" transaction;
- the meetings between Mr. Stevens and Mr. Kierans on July 31, 1985, and August 6, 1985;
- the meeting between Mr. Leung, Mrs. Stevens, and Mr. Coyle in August 1985;
- the meeting convened on August 7, 1985, by Mr. Eyton to consider what could be done for York Centre;
- the meeting on August 8, 1985, where Mr. Eyton reported to York Centre that nothing could be done;
- the sale in August 1985 of the Ontario Hydro bonds, including the search for bids, the overnight loan, and the method by which the proceeds of this sale were distributed among the York Centre group of companies to allow the paydown of bank loans and other indebtedness;
- the trip to South Korea by Mr. and Mrs. Stevens and Mr. Rowe and their visit to the Hanil Bank with Ambassador Campbell;
- Mrs. Stevens' repayment of her $75,000 loan from YCPL on September 4, 1985, and the related transactions involving, among others, Mr. Stevens;
- the development of the gold-mining investment in the La Ronge area of Saskatchewan;

- the proposal regarding commemorative coins and strip bonds involving the Vatican and Chase Manhattan; and
- the efforts of York Centre to raise financing on Bay Street, including the approaches to Hees, Dominion Securities, Burns Fry, and Gordon Capital.

As examples only, it is useful to review a number of entries for the purpose of showing both their nature and how subsequent evidence clarified their meaning. On or about December 6, 1984, at BB-7-64, the diaries contain a list headed "Denton" that consists of five items, the last being a reference to Mr. Stevens' "position." Miss Walker testified that she could not recall the entry or explain the reference to Mr. Stevens. However, Mr. Denton of the Hanil Bank testified that this entry related to a telephone conversation he had with Ted Rowe regarding, among other things, Korean banking officials' perplexity about the implications of Mr. Stevens' blind trust. Mr. Rowe had written to the Hanil Bank on November 29, 1984, explaining that Mr. Stevens' Gill shares were in such a trust. On November 28, 1984, the diaries record the following:

shares of GILL
put in B/T [blind trust]
but owns
cannot be sold
without consent
of trustee
① owns them
convince them
he is the owner

(BB-7-18)

Mr. Denton testified that he indicated to the Korean officials of the Hanil Bank that Mr. Stevens was still the beneficial owner of the shares, although he could not be involved with any of the business affairs of these companies.

A diary entry on February 4, 1985, reads:

350/sh = $650,000
Com & Cl A + Gill holdings

① Apr. 1985
250,000
over 4 yrs 100,000/yr

Type & sign
GILL & WJM.

Meeting held at King City
on Sunday Feb 3/85
2 pm

(BB-9-40)

Although Miss Walker testified that she was unable to recall the meaning of this entry, Mr. Rowe testified that it related to a meeting on February 3, 1985, when Mr. Mollard, in the company of Mr. Rowe, visited Mr. Stevens at his farm near King City and Mr. Mollard expressed a desire to have someone purchase his Gill shares. The initials WJM refer to William Mollard. Mr. Mollard's shareholdings in the York Centre group of companies consisted of common and Class A shares of York Centre plus his Gill shares.

It is evident that during the time that Miss Walker was a special assistant to the minister, her involvement with and knowledge of York Centre's affairs was extensive, embracing the day-to-day operations of York Centre. In fact, she remained an essential component of York Centre's management, relied on by other York Centre personnel. Her diaries are overwhelming evidence of her knowledge and her role.

Unfortunately, as a witness, Miss Walker was not forthright on the nature of her role at York Centre or the meaning of the entries in her diaries. In her testimony on Thursday, July 17, 1986, Miss Walker was asked about two one-sentence covering letters, signed by her, for cheques to the Hanil Bank:

> Q. Is that your signature at the bottom of that letter?
> A. That is my signature.
> Q. And did you compose that letter?
> A. No, I did not.
> Q. Who composed it?
> A. I would expect — I am not sure who composed it.
> . . . .
> Q. If somebody else composed it, why did you sign it?
> A. I can only conclude it was something I was asked to do.
> Q. And you do not know by whom?
> A. No, I do not.
> Q. And you don't know why — I gather you do not know why, or do you?
> A. No, I don't know why.
>
> (Transcript, vol. 5, pp. 647–48, 650–51)

The letters and cheques in question relate to the transaction in February 1985 whereby YCPL, as agent for Georgian Trust, sold a portfolio of B.C. Hydro bonds, the proceeds of which were used to pay down Hanil loans to YCPL and Gill Construction.

Subsequent evidence revealed the following sequence of events in regard to this transaction. In her diary on February 5, 1985, Miss Walker made note of a "proposal" to pay down the YCPL loan by $250,000 through the sale of the B.C. Hydro bonds for $538,000 (BB–9–48). On February 8, 1985, Miss Walker, on behalf of YCPL, wrote to Mr. Denton of the Hanil Bank making reference to "our discussions," outlining the "proposal" as well as noting that: "It is understood that a condition of the Bank to agreeing to this proposal would be the reduction of a loan made to Gill Construction Limited by an amount of

$150,000. We understand that Gill is willing to give that undertaking" (Exhibit 102, p. 68). On February 13, 1985, the Hanil Bank wrote to Miss Walker, acknowledging her letter and informing her that its head office in Seoul would have to approve the sale. On February 14, 1985, Miss Walker wrote to Mr. Denton on behalf of YCPL and Gill, confirming the paydowns of $250,000 for YCPL and $150,000 for Gill. On February 15, 1985, Miss Walker's diary records:

> 5 pm
> Arnold Denton
> Feb 15 → wants 200,000 paydown
> in Gill
>
> (BB-9-94)

This latter amount is the amount that was eventually paid down.

A difficulty arose in the transaction when the Seoul office of Hanil was slow in approving the sale of the bonds. Consequently, on February 26, 1985, as noted in Miss Walker's diary and confirmed by later testimony of Miss Walker and Mr. Denton, there were urgent attempts on the part of Miss Walker and Mr. Denton to obtain the necessary approval to release the bonds for sale. On February 27, 1985, telexes were exchanged between Hanil Bank Toronto and Hanil Bank Seoul. The necessary approval was obtained. On February 28, 1985, Miss Walker wrote to the Hanil Bank on behalf of YCPL, authorizing the bank to release the bonds to Burns Fry, the purchaser. On the same day, Miss Walker wrote the previously mentioned covering letters for the cheques to the Hanil Bank, which paid down the loans. All correspondence and cheques relating to this transaction were signed by Miss Walker.

In light of Miss Walker's involvement in this transaction as subsequently disclosed, I find that her answers when first presented with the letters were not truthful. Certain other answers given by Miss Walker in regard to her role at York Centre were also shown to be untruthful by further evidence and subsequently her own admissions.

On Thursday, July 17, 1986, under questioning from Commission counsel, Miss Walker gave the following evidence:

> Q. Did you tell — this is a general question and I would like you to listen to it carefully: Did you tell the ADRG at any time after the date of that letter [December 14, 1984] that you were performing some activities for York Centre Corporation?
> A. I was not performing activities for York Centre Corporation.
> Q. You weren't performing any activities for York Centre Corporation or any of its subsidiary companies or for Gill Construction?
> A. No. I had no office in those companies on which to base such activity.
>
> (Transcript, vol. 5, pp. 646–47)

On Wednesday, July 23, 1986, Miss Walker, under questioning from Commission counsel, made the following admission:

> Q. Miss Walker, I just want to remind you of the position that you adopted last week with respect to your activities at York Centre. You will recall you told us last week that you were not performing any activities for York Centre Corporation in 1984 and 1985, correct?
> A. Correct.
> Q. And that is not true, correct?
> A. Correct.
>
> (Transcript, vol. 8, p. 840)

On July 17, 1986, Miss Walker, under questioning from Commission counsel, gave the following evidence:

> Q. You told me earlier this morning that once you got into your new premises, you never went back to the York Centre offices at Commerce Court West. Is that correct?
> A. I never went in there to do any business, that is correct.
> Q. Well, did you go into the York Centre Corporation for any purpose at all?
> A. To meet someone for lunch? Is that what you mean?
> Q. Well, you tell me. Did you ever sit in the office and make phone calls or conduct business of any kind?
> A. Not to my recollection.
>
> (Transcript, vol. 5, p. 708)

On July 23, 1986, Miss Walker made the following admission:

> Q. You told us last week that after you moved over in February to First Canadian Place, apart from a lunch with Miss Foulkes, you never went back to York Centre Corporation for business purposes, and I think we can agree that was not true in spite of your oath at the time; is that right?
> A. Yes, I think we will agree to that.
>
> (Transcript, vol. 8, p. 954)

Miss Walker ultimately conceded that between November 1985 and June 1986 she had entered the York Centre offices outside of business hours some 35 times, which is on average once a week.

Miss Walker was one of the first witnesses at the Inquiry and she began her testimony before many documents became available to the Commission. On July 17, 1986, Miss Walker stated in evidence that the only documents relating to York Centre transactions involving her were the documents that the Commission had received from Hanil and CIBC. Subsequently, on July 23, 1986, Miss Walker admitted that this limited involvement was not true.

When Miss Walker was confronted with the untruthful answers she had given in regard to her activities at York Centre, her transaction of business from York Centre's offices, and the existence of other documents relating to her York Centre role, she attempted to explain her answers as arising from a misunderstanding of what "activities" meant. She suggested she was performing tasks of an administrative nature to be helpful to the company and because she cared about it. She then gave the following evidence:

> A. I can only say to you, sir, that Wednesday and Thursday of last week was a whole different situation in my mind than when I came in here on Monday.
> Q. I was going to ask you if there was any reason why you had misled the Commission last week that you would like to tell us about.
> A. It was not my intention to mislead.
> Q. You knew you were obligated to swear to tell the truth and you actually had the oath administered to you and swore to tell the truth?
> A. I did.
> Q. And you insist that you were telling the truth?
> A. I was telling the truth to the best of my understanding of what was required in an inquiry. I did not know what was to be volunteered, what was to be produced. All of these things I have since learned.
> Q. So, what you did is you misled the Commission and did not produce things; is that not right?
> A. Not intentionally.
> Q. This morning I asked you these questions. You said you agreed that they were not true, the answers given.
> A. It became obvious that —
> Q. So, there is no explanation, except you misunderstood the nature of this Inquiry; is that correct?
> A. Or any inquiry or any court proceedings.
> Q. Did you understand the meaning of an oath?
> A. I did.
>
> (Transcript, vol. 8, pp. 1001–3)

In assessing Miss Walker's explanation that she did not understand her obligation to tell the truth, it is useful to examine her demeanour as a witness once this obligation was made apparent to her. After she made the admissions just referred to, Miss Walker's answers to questions posed to her continued to be vague, hesitant, and evasive. Further, Miss Walker asserted a failure of memory in regard to events in which, the Commission subsequently learned, she had been directly involved. In particular, her answers regarding the minister's involvement in the affairs of York Centre fell within this category. For example, on Wednesday, July 30, 1986, Miss Walker was asked about an entry in her diary relating to a luncheon meeting at the Albany Club on October 11, 1985. There is a reference on that page to meeting Mr. Stevens. Miss Walker gave the following evidence:

> Q. Did Mr. Truax meet with Mr. Stevens?
> A. If it is the luncheon meeting that I am trying to recall, he did not meet with Mr. Stevens.
> Q. Did he meet with Mr. Stevens outside a luncheon meeting? In other words, forget the luncheon meeting. Did he have any other meeting with Mr. Stevens?

A. In this time period?
Q. Yes.
A. Not that I recall.

(Transcript, vol. 12, pp. 1613–14)

When Miss Walker gave this evidence, the Commission had yet to hear the evidence of Messrs. Donald Busby, Ron Netolitzky, and Robert Callander with regard to Mr. Stevens' involvement in the La Ronge goldplay. Therefore, it was only later, after Mr. Busby testified, that the Commission learned that Mr. Stevens had had an afternoon meeting at his CDIC offices on October 11, 1985, with Messrs. Truax, Rowe, and Busby where the possibility of York Centre's investing in Mr. Busby's La Ronge goldplay was discussed. Mr. Busby testified that Miss Walker came in and out of this meeting a couple of times and later accompanied the party to dinner at the CN Tower. Over dinner the La Ronge goldplay was discussed in general terms, and Mr. Busby explained the profitability of a high-grade gold mine.

After the meetings of October 11, 1985, Miss Walker periodically recorded the stock prices in her diaries for Golden Rule and other mining companies associated with Mr. Busby. She was asked by counsel on a number of occasions to explain these entries and why she was making them. Her answers were not helpful. For example, she gave the following evidence:

Q. So you cannot answer the question about why you recorded those details there?
A. No, sir, I cannot.

(Transcript, vol. 12, p. 1663)

Miss Walker's evidence in relation to the La Ronge goldplay must be assessed in light of evidence heard some months later that she not only came in and out of the meeting on October 11 a number of times and had dinner with the parties but that she had arranged the meeting as well. Further, her diary entries include details of the business venture while it was under consideration. For example, on September 27, 1985, at SW–7–31, Miss Walker's diary contains a note stating "Truax Oct 11th," followed by a reference to America 2000; there then is a line, and below that line are references to Canadian Premier Resources and Cumberland, companies involved in Mr. Busby's La Ronge goldplay. Although Mr. Stevens confirmed that Miss Walker arranged his schedule so he could meet Mr. Truax and Mr. Busby, he testified that he could not recall discussing with her the mining companies referred to on this page.

On October 11, 1985, during a break in his meeting with Messrs. Truax, Rowe, and Busby, Mr. Stevens spoke to Mr. Callander of Burns Fry with regard to some of the companies involved in the La Ronge goldplay. These companies included Mahogany, Golden Rule, and Canadian Premier Resources. Shirley Walker's diary for October 11, 1985, at SW–7–102, contains references to mining companies including Mahogany, Golden Rule and Canadian Premier Resources as well as a reference to Burns Fry. On October 17, 1985, Mr. Callander wrote to Mr. Stevens and enclosed material on the La Ronge gold district. The letter and material were sent to Mr. Stevens care of Miss Walker at CDIC.

There are numerous other references in Miss Walker's diaries to the La Ronge goldplay that indicate she had knowledge of these events. For instance, on November 27, 1985, Mr. Netolitzky visited Mr. and Mrs. Stevens at their farm near King City and later that day and the next met with Mrs. Stevens and others to discuss gold mines. On November 26, 1985, Miss Walker's diary notes:

> RON NETOLITZKY
> RYH 230 pm Buchan
> gold play
>
> (SW–3–68)

As events developed, Sentry sought, through a partnership with Giant Yellowknife, to buy, with the assistance of Mr. Netolitzky, a gold prospect held by the Saskatchewan Mining Development Corporation. On January 10, 1986, Miss Walker's diary contains the following entry:

> SOX Ron Nettalitsky
> Giant Yellowknife
> Partic w/ Sentry
> Sask Govt Bd
>
> (SW–8–12)

The subsequent evidence and the diary entries indicate that Miss Walker arranged the October 11 meeting, knew the companies involved in the La Ronge goldplay, knew that Mr. Stevens had a business meeting regarding the La Ronge goldplay, had attended a social event where the La Ronge goldplay was discussed, knew that Burns Fry had sent Mr. Stevens information regarding the La Ronge goldplay, knew about Mr. Netolitzky's involvement in the La Ronge goldplay, and knew that York Centre's interest in the La Ronge goldplay eventually developed through Sentry in a partnership with Giant Yellowknife. In light of this evidence, I find that Miss Walker misled the Commission in regard to events that have become known as the La Ronge goldplay. Further, I find that Miss Walker and Mr. Stevens discussed the La Ronge goldplay on October 11 and thereafter, and that Miss Walker was aware of Mr. Stevens' involvement in this York Centre activity.

Miss Walker's less than forthright stance was also demonstrated by her response to numerous requests that she translate shorthand in her diaries. On many occasions Miss Walker testified that she could not make sense of her own shorthand. On some occasions she was extremely hesitant and strenuously resisted counsel's efforts to have her give a word-by-word translation. On other occasions, when dealing with non-contentious matters, Miss Walker readily translated her shorthand notes.

Another example of Miss Walker's evasive demeanour as a witness is the evidence she gave in regard to her knowledge of York Centre's efforts to obtain financing. Miss Walker made a general admission that her diaries contain entries relating to York Centre's financing efforts. She was evasive, however, as to the particular firms involved and the particular events relating to the financing efforts, and whether these firms were also dealing with the minister on government business. For example, on Monday, July 28, 1986, Miss Walker gave the following evidence:

> Q. These people [Gordon, Dominion Securities, Burns Fry] my information is — and we will have evidence on it — were approached, the companies that I have referred to, in January or February of 1985 and again in July of 1985.
> A. On the York Centre side?
> Q. Yes.
> A. Well, I would have to be refreshed on that.
> Q. You do not remember that?
> A. I do not remember that.
>
> (Transcript, vol. 10, pp. 1246–47)

Miss Walker's memory failed to improve on the occasions when she was shown entries in her diaries relating to financing efforts. For example, as noted in Chapter 6, Mr. Davies approached Mr. Trevor Eyton of Brascan in October 1984 to assist in the financing effort. Mr. Eyton then spoke to Mr. Pat Keenan. Miss Walker's diary of November 7, 1984, contains the following entry:

> Davies:
>
> says early
> no word from Brascan
> Eyton to Keenan
>
> (BB–6–6)

Miss Walker testified that she could not recall in what circumstances this entry was made. On November 18, 1984, her diary reads:

> Pri placemt
> Eyton raised it
> Waiting to hear from Keenan
> as to which way could be
> handled
>
> (BB–6–82)

Although Miss Walker conceded that this entry related to York Centre financing, she testified that she could not explain what was being discussed.

Entries in Miss Walker's diary during the winter of 1984–85 indicate a familiarity with the persons and times of meetings for the financing efforts. Certain entries also indicate a knowledge of the types of proposals being considered. For example, an entry dated February 20, 1985, reads in part as follows:

> Peter Cole
> Joe Downy
> G. Mgr INV
>
> Eberts — 2 wks w/
> guarantee principal
> but not
> not guarantee
> cash div
> or int pyt.
>
> CIBC [shorthand] put up equity
>
> [shorthand]
>
> Ted you are guaranteed
> by Cougar
>
> If CIBC
> Then CB come in $1.4 MILL
>
> Who better to lead it
>
> (BB–10–10)

Mr. Cole of CIBC identified Mr. Downy as someone with whom he had discussed a York Centre financing proposal involving strip bonds. Mr. Cole had referred Mr. Rowe to Mr. Eberts of Gordon Capital for assistance in financing. It is apparent that the page refers to a type of financing scenario then being considered for York Centre.

Miss Walker in her testimony claimed to be unaware of the approaches made to Gordon Capital, Burns Fry, Dominion Securities, and Trevor Eyton in the summer of 1985. On July 5, 1985, Mrs. Stevens and Mr. Rowe met with Ms. Jo Bennett of Gordon Capital, Mr. Eyton and Mr. Ken Clarke of Great Lakes to discuss possible equity financing for York Centre. On that day in her diary, Miss Walker, under the heading of "TED," listed Trevor Eyton and Jo Bennett as part of a meeting schedule (SW–1–63). On July 11, 1985, the following entry appears in her diary:

Jo Bennet / Eyton

	EA
— DSP	500,000
— BBD	
— O & Y	
— BRASCAN	
	2 MILL
+ GORDON SAY	.5
	2.5 MILL

(SW–2–4)

Miss Walker testified that she was unable to explain the entry, although she did say that the entry did not relate to ministerial business and that it looked like a telephone message.

On August 7, 1985, Mr. Eyton met with Messrs. Tony Fell of Dominion Securities, Jack Lawrence of Burns Fry, Neil Baker of Gordon Capital, and Ken Clarke of Great Lakes and decided that nothing could be done for York Centre. Mr. Eyton reported this to Mr. Rowe and, according to his diary, Mrs. Stevens on August 8, 1985, and indicated that Hees would be willing to assist in liquidating the company. Miss Walker's diary for that day includes the following consecutive entries:

EYTON very little consequence
offer disguise Bank call
they bring in Hees to liquid
③ → no reason to continue existence
① We wd like to go away
② $1 MILL GIFT — won't solve problems
③ Hees

(SW-4-137)

NMS/EGR [Noreen Stevens/Ted Rowe]
Aug 8/85

MYW yields resids same G
coupons 11.95

Gordon

Tony Fell — DSP
Jack Lawrence — BI
Gordon Sec (not Connacher)
Ken Clark Gt Lake Shipp
Eyton, T.

$ 1 MILL won't stop

Hees liquidate the Co.
— real est
— oil & gas
— farm

(SW-4-138)

Miss Walker was unwilling to relate the information contained in these two diary entries to the meetings and the efforts to obtain financing for York Centre. I find her evidence in this regard to be deliberately evasive. I find that she clearly had knowledge of who attended the August 7 meeting and was subsequently made aware of the results of the August 8 meeting.

Miss Walker's evidence in regard to the loan of $2.62 million to Cardiff was also less than forthright. On Thursday, July 17, 1986, Miss Walker gave the following evidence as to her knowledge:

Q. Were you aware that Mrs. Stevens had raised, in May of 1985, the sum of $2.6 million as a result of a loan from a Mr. Czapka, a former officer of Magna International?
A. I was not.

(Transcript, vol. 5, pp. 711–12)

On Wednesday, July 23, 1986, Miss Walker clarified her answer as follows:

Q. And you swore that you were not aware that Mrs. Stevens had raised $2.6 million for the company in May of 1985 through the Czapka loan. That is not entirely correct either, is it?
A. Yes, sir, that is correct.
Q. Did you not know that she had raised $2.6 million?
A. I knew nothing about the Czapka loan, sir.
Q. Did you know that she had raised $2.6 million in May of 1985?
A. I knew she had raised money, yes.
Q. $2.6 million?
A. Yes.
Q. So what you are saying is you did not know who the lender was?
A. That is correct.

(Transcript, vol. 8, p. 841)

Miss Walker then gave the following evidence as to how she learned of the $2.6 million:

Q. Did [Noreen Stevens] give you information, for example, about the loan in May of 1985 that we have spoken of?
A. I knew she had raised money, but that is all I did know.
Q. Did she give you that information.
A. I am not sure whether she gave it to me or Mr. Rowe did.

(Transcript, vol. 8, p. 851)

By her own admission, therefore, Miss Walker discussed this loan in the spring of 1985. She knew at that time that Mrs. Stevens had raised this loan, which provided relief to the financial difficulties faced by the York Centre group of companies.

On April 3, 1985, the day before Mrs. Stevens met Mr. Stronach and was introduced to Mr. Czapka, the following entry appears in Miss Walker's diary:

Stronach
↔
today—
① 2 things

[buy 200,000 Cl B
+ issue

buy Cardiff Investments
② net worth
2½ million

(BB–12–25–26)

No witnesses were able to explain this entry. Miss Walker testified that she could not remember the entry or understand it. Subsequently, Mrs. Stevens and Mr. Czapka entered into negotiations and signed a letter of agreement on Monday, April 29, 1985, which included a $2.62 million mortgage and a land development agreement. Miss Walker's diary for Friday, April 26, 1985, reads:

> 2.6 mortgage
> defer int
>
> land develop
> agmt
>
> X Edm
> X K. Twp

(BB–13–66)

The "X" Edmonton and King Township refers to two properties that Mr. Czapka determined he was not interested in.

On May 16, 1985, the day the moneys were advanced from Mr. Czapka, Miss Walker's diary contains the following entry:

May 16/85

CIBC	1,405,525.36
Bassel Sullivan Gty.	200,091.08
Stikeman Hanil	1,014,383.56
	2,620,000.00

(BB–14–80)

The entries refer to how the proceeds of the loan of $2.62 million were distributed. The three recipients were the Canadian Imperial Bank of Commerce, Guaranty Trust, and the Hanil Bank. When shown this entry, Miss Walker gave the following evidence:

> A. It appears to be an amount of a bank loan, a pay-down and a balance.
>
> . . . .
>
> Q. Tell us what this is, then, in your own words.
> A. It appears that there is a bank loan of $1.4, pay-down by guarantee of $200,000, pay-down —
> Q. Why do you say pay-down?
> A. Looking at it again, it looks like we are adding up here, when I look at the total.
> Q. Miss Walker, let us see if we cannot expedite this. Do you have any doubt whatsoever about what is on that page, May 16, 1985? That was a big day and a big event in the life of York Centre; was it not?
> A. It certainly is all banking information.
> Q. Is that all you can say about it?
> A. I am trying to make sense out of it.

(Transcript, vol. 11, pp. 1413–14)

Miss Walker eventually conceded that this entry did, in fact, relate to the mortgage loan of $2.62 million which Cardiff received on that day. However, she testified that she could not recall who gave her this information and she insisted that she was unaware of who the lender was.

In reviewing the evidence relating to Miss Walker's knowledge of the financing efforts on behalf of York Centre, I find that Miss Walker was kept informed of who was being approached for financing and of the types of proposals being considered. I also find that, at or near the time negotiations were successfully completed, she was aware of the loan to Cardiff and its terms. She was aware when the funds were advanced and how they were dispersed. The questions that then arise are: Did Miss Walker inform Mr. Stevens of these matters? Did she pass information to and from Mr. Stevens regarding the private affairs of York Centre?

Miss Walker made a general denial that she discussed York Centre affairs with Mr. Stevens when she gave the following evidence:

> Q. Now, Miss Walker, it has been suggested in a number of the allegations that are before the Commissioner that Mr. Stevens' trust was not blind and that he was receiving information about what was going on with York Centre Corporation. I ask you: Were you the messenger that was delivering information to Mr. Stevens?
> A. My answer is no, sir, I was not.
>
> (Transcript, vol. 8, p. 850)

This denial must be assessed in light of several considerations: first, my finding that Miss Walker was not a credible witness; secondly, evidence such as Miss Walker's access to Mr. Stevens, the absence of any understanding between them prohibiting discussion of York Centre affairs, and the fact of Miss Walker's knowledge of Mr. Stevens' involvement in the La Ronge goldplay; and, thirdly, certain lists and other entries in Miss Walker's diaries which indicate communication between them regarding York Centre affairs.

Miss Walker had access to Mr. Stevens, which gave them the opportunity to discuss York Centre affairs. When he was in Ottawa, Miss Walker spoke to him on the telephone approximately once a week. She also visited Ottawa approximately once a month. When Mr. Stevens was at CDIC in Toronto, Miss Walker organized his schedule and passed on his messages to him. Even Mr. Stevens conceded that he met with Shirley Walker 20 to 30 times while he was a minister. It is readily apparent that Mr. Stevens and Miss Walker had frequent opportunities to communicate in private.

Further, there was no understanding between Miss Walker and Mr. Stevens that they should not discuss York Centre affairs. Miss Walker gave the following evidence:

> Q. Was it you or was it Mr. Stevens who decided that no such information should be passed to him?
> A. It was never discussed.

Q. All right. So you operated on your own instinct, is that it?
A. I did.
Q. And did the Minister ever indicate to you that you should not pass information on to him?
A. He did not.

(Transcript, vol. 10, p. 1249)

The absence of such an understanding is also evident in a conversation referred to earlier that Miss Walker had with Mr. Denton of the Hanil Bank in regard to the release by the bank of the bonds to facilitate the February bond sale. Miss Walker gave the following evidence:

Q. In what circumstances would you be suggesting that Mr. Stevens call the president of the bank in Seoul about York Centre-Hanil banking operations?
A. I think that is just a little roust that Mr. Denton and I had.
Q. A little what?
A. A lively discussion. Because they were taking so long to get this release through, I went through the list of people he could talk to in Canada to get the approvals, and I think he just simply said to me, well, the only thing I can think of is to have Mr. Stevens call Seoul.
Q. You suggested that, though, did you not? The text is: Maybe Mr. S. could call your president in Seoul. That is your suggestion, is it not?
A. No, this is Mr. Denton telling me. When I went to the top of the line in Hanil, to Mr. Lee, presumably, I would threaten him with that.
Q. Threaten who with that?
A. Mr. Lee; if he did not get me the releases, I would try and get someone else to get the releases activated. Anyway, we got them, and it all went away.

(Transcript, vol. 10, pp. 1340–42)

It is interesting that Miss Walker's reaction to this suggestion, assuming it came from Mr. Denton, was not to respond immediately by saying that such a suggestion was inappropriate under the guidelines and the blind trust. If Miss Walker made the suggestion, this reveals her insensitivity to the minister's obligations.

Certain lists and other entries in Miss Walker's diaries suggest that she discussed or intended to discuss York Centre matters with Mr. Stevens. As noted in Chapter 6, in October 1984 Mr. Stevens suggested to Mr. Jim Davies that Trevor Eyton be approached to assist York Centre in its search for financing. Miss Walker subsequently made notes regarding Mr. Eyton's activities. In early December 1984 the management of York Centre met with Mr. Tim Casgrain and Mr. Manfred Walt of Hees. In her diary, Miss Walker noted the change of date for this meeting to December 10, 1984 (BB–7–58). The following is the complete text of a page in Miss Walker's diary in December 1984:

Wed Dec 26

③ Letter to SMS [Sinclair M. Stevens]

Trevor Eyton
called Wed to
explain attitude
on 3 things
we are in

real bottom line

Complimentary about mgmt
Sales presentation
Too linked to them

has
Richardson nobody

You take 1 million
or so.
Not what they are looking
for — too open end
paid off in shares

T.E. 1 MILL +
CIBC 1 √ +

(BB–8–5)

After their meeting with York Centre management, Mr. Casgrain and Mr. Walt sent a memorandum to Trevor Eyton assessing the York Centre proposal for financing. This note in Shirley Walker's diary summarizes the essential ideas in that memorandum. Mr. Eyton testified that he would have conveyed this information to Mr. Rowe. Miss Walker testified that she presumed this information was given to her by Mr. Rowe. Mr. Eyton testified that he had no intention of writing a letter to Mr. Stevens, and no evidence exists that such a letter was written. The absence of a letter was apparently a matter of concern to Miss Walker, for she noted a few days later: "NO EYTON LETTER — WALT. HEES ATTITUDE."

The entry "NO EYTON LETTER" comes from a list, made on or about December 29, 1984, which contains some 22 items. This list is only one of a number of lists which are headed "SMS" or "Minister," or in some other way indicate that the information on the list is for Mr. Stevens. The reference to Mr. Eyton is from an item which reads in full as follows:

⑬ TED — SIS. 1.2 MILL — MAR CLOSING
WORK IN PROCESS
JAN. 2 — INTERESTED BUYERS
NO EYTON LETTER — WALT. HEES ATTITUDE
RESPONSE TO ESSO — SECOND CHGE — NO OPTIONS
4 - SQUARE — VERBAL AGMT TO EXTENSION
Cummins sale Jan 15

(BB–8–23)

The affairs of York Centre are the subject matter of this item on the list. The first three lines refer to the possibility of making a sale of the Sisman's building or of Sisman's work-in-process inventory. Sisman's was in receivership at this time. The fourth line has already been discussed. The fifth line refers to Canalands' investment in the Beaufort Sea in partnership with Esso. The last two lines of this item refer to real estate sales and their prospective closing dates. At the time Miss Walker made this list, which primarily concerns government business, she would still have been located in her York Centre office.

Miss Walker gave the following evidence in regard to item 13:

> Q. Yes, but you have got a list here which, you have agreed, is a list of information to give to the Minister. The source of that information under 13 is quite obviously Ted. He is telling you this, and you are conveying it to the Minister, or am I being unfair in suggesting that to you, Miss Walker, as with all the other items on this list?
>
> A. My hesitation is — I made the list. It appears that I conveyed all the information to the Minister. Whether I did or whether I did not, I do not know.
>
> Q. Your intent was to convey this information to him?
>
> A. In making such a list, yes.
>
> (Transcript, vol. 10, p. 1280)

Miss Walker was asked about the last item on the list and gave the following evidence:

> Q. Item 22 says "Calving one of each."
>
> A. Right.
>
> Q. I suggest to you that was a piece of information, as with all of the other pieces of information on this list, that you were conveying to Mr. Stevens; is that correct?
>
> A. Yes, I believe so.
>
> (Transcript, vol. 10, p. 1288)

It is clear from this evidence that Shirley Walker intended to convey the information in item 13 to Mr. Stevens. When Mr. Stevens was asked about this list he recollected that he was in Florida around this time and had received a phone call from Miss Walker. He agreed that almost all the items on the list would have been communicated to him except for item 13. In examination-in-chief, he stated that after Miss Walker had given him relevant information she would ask to speak to Mrs. Stevens and items such as item 13 would be communicated to his wife. In cross-examination, Mr. Stevens gave the following evidence:

> All I can tell you is that it was not uncommon for Miss Walker to phone. Sometimes she would get Noreen first and she would mention certain things to Noreen, some things that had been passed on to her because somebody like Alice, say, knew that Miss Walker was intending to phone me, and Alice would say "when you are speaking to Sinclair, if Noreen is there, would you mention such and such."

> Sometimes she would speak to me first of all, and I can remember she would say "is Noreen there; I have got a couple of messages for her."
>
> (Transcript, vol. 74, pp. 12,805–6)

This answer is interesting in that it confirms that Miss Walker was in regular communication with the Stevenses even when they were out of the country. It is also interesting in how it shows the close communication between Alice Patry, Mrs. Stevens' secretary, and Miss Walker, Mr. Stevens' assistant. As to the possibility that item 13 on the list would have been communicated to Mrs. Stevens, I am struck by the fact that Miss Walker, although confronted with a number of similar lists over almost two weeks of testimony, never raised this possibility to explain the presence of York Centre items on lists intended for Mr. Stevens. Mrs. Stevens, in her testimony, also failed to raise this possibility.

A little less than two weeks later, on January 9 and 10, 1985, Miss Walker made another list of 14 items and at the top of the list is written:

> Jan 9/85
> SMS.
>
> (BB–8–73)

Miss Walker agreed that most of the information on this list would have been conveyed in a telephone call to Mr. Stevens who, at that time, was somewhere in the Caribbean. On January 8, 1985, Miss Walker had sent Mr. Stevens a telex in the Grand Turk. Item 8 on the list says:

> | showed deal
> Ted — Walt | to Rick
> Eyton Fla. | Drayton

followed by the stock prices for York Centre, Canalands, and Sentry. Both Miss Walker and Mr. Stevens testified that such information would not have been conveyed to Mr. Stevens because it was not of interest to him. As further lists were shown to Miss Walker which combined government and York Centre business, the idea that York Centre matters were not of interest to Mr. Stevens and so would not have been communicated to him became a common refrain, both of Miss Walker and, later, of Mr. Stevens.

On April 11, 1985, by which time Miss Walker had moved her office to First Canadian Place, her diary contains the following entry, which is the only entry on the page:

> SMS
>
> ① Rowe — Jo Bennett
> mtg Wed 11 am
> Ted back Sat evg
> to Ott Mon.

② David Ganong — re APEC
at Prov. Econ Council
called Aline re yours Mon.
St. Stephen (506) 466–1220 B
N.B. 466–1329 R
St. St.

③ HEULE OF INTERPROVL. PIPE SAID
TO SHAREHOLDERS' MEETING THEY
HAVE "TAKEN A LOT OF GOOD LOOKS"
AT EXTENDING NORMAN WELLS LINE TO
BEAUFORT SEA. AND EXISTING LINE IN
STRATEGIC LOC. FOR BRING'G OIL SO

(BB–12–98)

The first item on this list refers to meetings that Mr. Rowe was having with Ms. Bennett of Gordon Capital regarding financing for York Centre. The second item relates to government business; Mr. Stevens testified that he recalled speaking to David Ganong, who could easily have given him his two phone numbers. Miss Walker testified that the third item was probably taken out of the newspapers. This item would have been of interest to York Centre because of its investment in the Beaufort.

Miss Walker testified that items 1 and 3 on the list would not have been of interest to Mr. Stevens because they relate to York Centre affairs. It must be borne in mind that Miss Walker gave her evidence prior to the evidence canvassed earlier in this report relating to Mr. Stevens' involvement in and knowledge of the affairs of York Centre in this time period. This entry was made, for example, after the meeting Mr. Stevens had with Mr. Angus Dunn in Singapore, where they discussed the possibility of Morgan Grenfell assisting in raising equity for either Canalands or Sentry, and after Mr. Stevens had met on March 16, 1985, with Mel Leiderman, York Centre's accountant, and discussed possible reorganizations involving Sentry. In light of this evidence and other evidence disclosing Mr. Stevens' interest in York Centre, I reject the explanation that York Centre matters, on a list such as this, would not have been of interest to Mr. Stevens. I find that the list headed "SMS," consisting of three items, was intended to be communicated to Mr. Stevens in its totality, including the two items relating to York Centre.

At SW–9–179 there is an entry dated April 2, 1986, and it is headed "SMS TO NMS." It reads as follows and is the only entry on the page:

SMS TO NMS

If we do bond deal

Have G.T. subscribe
treas shs of GILL
GT controls GILL

reorg
used G. UK.
$700,000
        convert to shs
        of YCC
exchanging debt

If the short forms are eliminated, the entry reads:

> Sinclair Stevens to Noreen Stevens
>
> If we do bond deal; have Georgian Trust subscribe treasury shares of Gill; Georgian Trust controls Gill; reorganize; used Georgian U.K.; $700,000; convert to shares of York Centre Corporation; exchanging debt.

The entry concerns a proposed reorganization of the York Centre group of companies which was being discussed at this time. On the date of the entry, Mr. Stevens was in Vancouver and Mrs. Stevens was not with him. Mrs. Stevens was unable to recall whether Miss Walker gave her the information contained in the entry. Both Miss Walker and Mr. Stevens denied that the message was information that Mr. Stevens wanted passed on to his spouse. Both Miss Walker and Mr. Stevens suggested that the line underneath "SMS TO NMS" meant that the words below the line were unconnected to "SMS TO NMS." I find this explanation unbelievable in light of the April 13, 1986, meeting arranged by Miss Walker and attended by Mr. and Mrs. Stevens and Mr. Leiderman at which reorganization and debt-to-equity scenarios similar to this outline were discussed. I find that this entry is a message received by Miss Walker from Mr. Stevens with the intention that she pass the message on to Mrs. Stevens.

Conclusions

Shirley Walker, as a long-term loyal assistant to Sinclair Stevens, was privy to the most confidential information relating to his personal affairs, which she continued to administer while she was his special assistant. Notwithstanding her obligation as a special assistant to withdraw from her role with the York Centre group of companies, she did not do so. As a result, Miss Walker had intimate knowledge of and involvement with all important aspects of these companies' affairs while she was a special assistant.

During Mr. Stevens' tenure as minister, Shirley Walker had regular and private access to him both by telephone and in person. This contact occurred as frequently as four times a month and, by its very nature, required Miss Walker to compile and assemble information to communicate to the minister in order to obtain his direction or to keep him fully informed of events that were occurring.

Shirley Walker's diaries are a contemporaneous and essentially accurate account of the main events in the affairs of the York Centre group of companies and in the political life of Sinclair Stevens. These diaries mingle, on a daily basis, government and private business. The diaries indicate that Miss Walker was, on any given day, dealing with both government and private business.

I find that Miss Walker collected information to pass on to Mr. Stevens. Some of this information was contained in lists. This information related to both governmental matters and the private business affairs of Sinclair Stevens, including important information pertaining to the York Centre group of companies. Miss Walker conceded that the lists were prepared with the express intention of conveying the information contained therein to Mr. Stevens. Despite this admission, both Mr. Stevens and Miss Walker reiterated again and again that items on the lists pertaining to the business affairs of the York Centre group of companies were not of interest to Mr. Stevens and therefore would not have been communicated to him, despite their appearance on the lists. On some occasions, Mr. Stevens and Miss Walker simply asserted that they could not recall whether such items had been the subject of discussion between them.

I reject these explanations. The evidence that described Miss Walker's administrative capabilities showed her to be scrupulous as to the many details she was obliged to attend to, as indeed her diaries confirm. The manner in which she conducted her business affairs gives rise to the inference that, if such information were intended to be conveyed, it would be conveyed. Both Mr. Stevens' and Miss Walker's assertion of a lack of interest in the business affairs of the York Centre group of companies on the part of Mr. Stevens is belied by the evidence heard by the Commission in relation to Mr. Stevens' extensive knowledge of, and involvement in, the ongoing affairs of the companies. No tenable reason has been advanced to support the claim that Mr. Stevens and Miss Walker did not discuss their areas of mutual interest and activity in the affairs of the York Centre group of companies.

I find that Shirley Walker routinely conveyed to and received from Mr. Stevens information regarding the affairs of the York Centre group of companies.

Chapter 18

The Role of Noreen Stevens

At the heart of many of the allegations is the role that Noreen Stevens allegedly played in managing the assets of the blind trust, in negotiating the Czapka loan, in assisting the search for financing for the York Centre group of companies, and in the mingling of the public and private interests of Sinclair Stevens. It is alleged that Mrs. Stevens dealt with and approached — either on her own or by the direction in part of her husband — the same firms and individuals that her husband dealt with as minister. These allegations raise issues of both conflict of interest and whether the blind trust was truly blind. These allegations, if proven, indicate activities on the part of Noreen Stevens that required the minister to take the necessary steps to prevent real or apparent conflicts.

In general, Mrs. Stevens denied a managerial role in the York Centre companies. She insisted that she acted solely as solicitor for the companies, except for certain limited activities undertaken as a director. Further, she testified that as a solicitor she had a duty of confidentiality to her clients which prevented her discussing their affairs with her husband. It is very important to ascertain whether Mrs. Stevens can be regarded as acting solely as a solicitor. If her activities were those of a solicitor, a number of points would follow. Mrs. Stevens would be correct in stating that she had a duty to keep confidential any matters pertaining to her clients' affairs. This is an historic obligation of solicitors. As well, the minister could not be expected to inquire into matters which Mrs. Stevens was duty bound not to disclose. Thus it is imperative that I determine the nature of her true role and, in addition, whether she perceived herself as acting solely as a solicitor at the time.

It is obvious that Mrs. Stevens acted as solicitor for the York Centre group of companies. She had done so for some 25 years, incorporating many of the companies and handling their day-to-day legal matters. Her professional association with her husband began in the early 1960s when she joined Stevens, Hassard & Elliott, a law firm established by her husband and two law school classmates. In 1967 the firm was dissolved and in 1969 she established Stevens & Stevens in partnership with her husband, although he was never involved to any great extent in the practice of law. Mrs. Stevens is essentially a sole practitioner, the

York Centre group of companies, including Gill, being a major client. However, the issue of whether her activities went beyond those of a solicitor remains.

Whether Mrs. Stevens' actual role in the York Centre group of companies was that of a manager is particularly relevant, given the nature of the allegations, to the issue of whether the minister was in a position of real conflict. It is helpful at this point to reiterate that a real conflict requires knowledge on the part of the minister of a private interest sufficient to influence the exercise of his or her public duties and responsibilities. Therefore, to determine whether Sinclair Stevens was in a position of real conflict of interest, I shall need to make a finding regarding his actual knowledge of the affairs of the York Centre companies. Many of the allegations allege that Mr. Stevens' knowledge arose from communication between Mr. and Mrs. Stevens regarding the affairs of York Centre. If such communication occurred, it will be an important factor in assessing the nature and scope of the minister's knowledge of his private interests. Obviously, the extent and character of Mrs. Stevens' role will determine what information was available to her for communication to Mr. Stevens.

Mrs. Stevens' actual role is also relevant to the question of appearance of conflict. It is helpful to reiterate that an apparent conflict does not require actual knowledge on the part of the minister of his or her private interest. Instead, an apparent conflict occurs where there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict exists. In other words, the test, when considering the issue of knowledge, is whether reasonably well-informed persons would properly conclude that the minister had knowledge. In this regard, Mrs. Stevens' actual role, including the scope of her knowledge, would be one of a number of facts that any reasonably well-informed person would consider in determining whether there was a reasonable apprehension that Mrs. Stevens communicated to her spouse information relating to matters of mutual economic concern.

In approaching the very important question of actual knowledge and actual communication regarding the York Centre group of companies, I intend to consider only evidence, direct or circumstantial, of communication, of the circumstances of such communication, and of the reasons offered, if any, by Mr. and Mrs. Stevens as to why communication did not occur on other occasions. Although reference will be made in this chapter to certain evidence relating to Noreen Stevens, my findings regarding her are based on the full detail of the evidence of her activities as set out here and elsewhere in this report.

Nature of Role

Officer and Director

Noreen Stevens' formal association with the York Centre companies went beyond that of solicitor. While her husband was minister, Mrs. Stevens continued to be an officer or director of many of the York Centre group of companies, including companies in all areas of investment activity. She held the following offices and directorships in the years prior to June 30, 1985, and June 30, 1986:

Real estate

Cardiff	vice-president and director
Clady Farm	vice-president, secretary, and director
York Centre Properties Woodbine Ltd.	assistant secretary

Oil and gas

Sentry	secretary and director
North American	vice-president (1985 only) and director
Cumberland	secretary (1985 only) and director

Bonds

Georgian Equity	president and director
Georgian Trust	director
YCPL	vice-president and director
Royal Cougar	secretary-treasurer and director

Although these titles might be helpful in describing Mrs. Stevens' relationship with the York Centre companies, I do not consider that this formal association determined her true role. Although it is not unusual for a solicitor to be nominally involved in the management of companies as a director, it is less common for a solicitor to be an officer of a company on an ongoing basis when not acting as "in-house" counsel. Mrs. Stevens never suggested she was "in-house" counsel, but rather an independent sole practitioner. Mrs. Stevens' actual role can only be assessed by examining her involvement in York Centre affairs. The evidence called at this Inquiry, and canvassed in part below, established that Mrs. Stevens' positions, as an officer and director, and her activities associated with those positions, went well beyond those of a solicitor.

Real Estate Mr. Rowe, president of York Centre, testified that between October 1984 and May 1986 Mrs. Stevens became actively involved in the management aspects of the York Centre group of companies, especially in relation to real estate transactions. The principal transactions were the Czapka loan, the creation and sale of the Equion limited partnership units, and the sale of various real estate properties. Mrs. Stevens' role was central in all these transactions.

Of these transactions, the largest and most important was the Czapka loan. Noreen Stevens was the only person to deal with Mr. Czapka in negotiating the $2.62 million loan to Cardiff. When asked whether anybody at York Centre wanted to know who the lender of the $2.62 million loan was, Mrs. Stevens replied:

> No, not really. They seemed content to leave it in my decision. There were not that many, and you forget that Mr. Rowe had Canalands

> and Mr. Macgregor, and he had other things to address besides just the real estate, and the real estate was pretty well left with me and Mr. Mollard.
>
> (Transcript, vol. 67, p. 11,615)

Mr. Mollard retired in the spring of 1985. Mrs. Stevens also testified that when Mr. Douglas Hopkins, the vice-president and director who put together real estate limited partnership proposals, retired, she replaced him at Cardiff. It is to be noted that Mr. Hopkins is not a lawyer.

I find that in this area Mrs. Stevens can only be described as a central decision maker, directing the course of affairs within the real estate division. Such a role is consistent only with that of senior management. I find that in relation to real estate, Mrs. Stevens did not confine her activities to those of a solicitor.

Oil and Gas I have found that at the March 1985 meeting with Mr. Leiderman, management matters were discussed, including reorganization and refinancing of the companies. Mrs. Stevens testified that one of the reasons she was at the meeting was to have input as a director and secretary of Sentry. Mrs. Stevens developed the new gold-mining initiative and presented it to the Sentry board of directors in June 1986; Mr. Macgregor, president of Sentry, was uninvolved until the completion of the deal. Mr. Netolitzky, who arranged the transaction on behalf of Sentry, testified that Mrs. Stevens was his primary contact at Sentry and that she acted as a business person. When confronted with this evidence, Mrs. Stevens asserted that in regard to the goldplay she acted "as a lawyer and as a director" (Transcript, vol. 67, p. 11,423).

On September 24, 1985, she attended what the minutes describe as a management meeting of Canalands, at which she took on the responsibility to pay Mr. Macgregor and Mr. Neary, president and vice-president of the company. Mrs. Stevens, who was not an officer or director of the company, testified that the president of the company would look to her as someone who might raise funds.

It is clear that Mrs. Stevens' status in these oil companies does not reflect her position as solicitor. Leaving aside Mr. Stevens' role, which was discussed earlier, she was the person at York Centre who spearheaded the development of the major new initiative in the oil and gas area while her husband was minister — the La Ronge goldplay. It is noteworthy that she undertook this task in the absence of the senior executive officer of the company. What is perhaps more remarkable is that, without any formal position in the company as an officer or director, she conducted herself with authority in relation to raising money for Canalands.

Strip Bonds There was little day-to-day management required of this group of companies. The principal asset of the group, Georgian Trust's bond portfolio, was largely sold in February and August 1985. Prior to the August bond sale, Mrs. Stevens actively sought a vehicle to utilize the portfolio to obtain new financing. Her meetings with Mr. Kierans and Mr. Leung were to obtain advice as to how this could be done. Mr. Leung could offer no assistance and Mr. Kierans advised that the portfolio be sold. When it was determined that the bonds could not be utilized, most of them were sold; this transaction was the largest single generator of cash for the companies while Mr. Stevens was minister, not only for the bond group but for all the York Centre companies. As already noted, the evidence as to who made the decision to sell the bonds is unsatisfactory. No one with any apparent direct connection to the sale, including Mrs. Stevens, could provide an answer as to who made the ultimate decision to sell. I have already found that Mr. and Mrs. Stevens were aware of this sale when it occurred.

Mr. and Mrs. Stevens always envisaged possibilities for this group of companies. On January 2, 1985, Georgian International Corporation was incorporated in the United Kingdom. Some of the reorganization scenarios developed in the spring of 1985, including those discussed at Mr. and Mrs. Stevens' meeting with Mr. Leiderman on March 16, 1985, contemplated that Georgian International would become the owner of York Centre's interests in the bond companies and, in turn, would become the financial services arm of Sentry, which would own it.

The event of most importance in assessing Mrs. Stevens' role in the bond group of companies is the major investment initiative attempted by this group while Mr. Stevens was minister. That initiative was, of course, the Christ coin proposal.

While Mr. Stevens was minister, apart from Mrs. Stevens there was only one other officer and director of Georgian Equity, Grady Thrasher, the incorporating lawyer in Atlanta, Georgia. When asked who was responsible for the management of Georgian Equity, Mrs. Stevens testified that the company was relatively dormant "because it basically just holds interest in other companies, so it does not need a lot of day-to-day management" (Transcript, vol. 64, p. 10,972). Georgian Equity owned a 43 percent interest in Georgian Trust, which held the bond portfolio.

As to the ownership of Georgian Equity, the evidence of Mr. and Mrs. Stevens was that of the original 1500 shares issued to Mr. Stevens, which represented just under 50 percent of the issued shares, 1000 of the shares were impressed with a trust. These 1500 shares were transferred to Mrs. Stevens on July 18, 1984, 500 as a gift from her husband. The remaining 1000 shares were transferred to the Apollo Trust Corporation Limited, effective February 10, 1986. In her evidence, Mrs. Stevens was uncertain whether the documents setting up the trust were actually executed prior to the commencement of this Inquiry. This fact was not established one way or the other in the evidence. The 1000 shares are in a "discretionary trust," which was described in the evidence as a trust without a named beneficiary, the naming of the beneficiary being in the discretion of the trustees. Whoever this beneficiary might be, there is no doubt as to the close affinity between Georgian Equity and Mr. and Mrs. Stevens, as evidenced by these transactions as well as by Mrs. Stevens' position as president and director since July 1984, when she replaced Mr. Stevens. From the evidence, apart from Shirley Walker, there is no one other than Mrs. Stevens or Mr. Stevens who could be said to manage the Georgian companies.

Mrs. Stevens' involvement in the bond group extended to management decisions, such as finalizing financial statements and unwinding companies. Mrs. Stevens testified that in November 1985 she had a discussion with Miss Walker and Mr. Leiderman about unwinding YCPL back to a shell company and having it dissolved. YCPL had been activated in 1983 to be an agent for Georgian Trust in obtaining the loan from the Hanil Bank, which was secured by the bond portfolio. Subsequently, YCPL acted as agent for Georgian Trust in the bond sales of February and August 1985. Therefore, after the sale and the liquidation of the Hanil debt, YCPL served no purpose.

Miss Walker testified that she had a discussion with Mrs. Stevens and Mr. Leiderman about the financial statements of YCPL in January 1986. On January 23, 1986, Mr. Leiderman made a note regarding YCPL, "I reviewed 1984 fin/stat with SW & NS & we finalized them," and a note regarding Georgian Equity, "I reviewed March '85 drafts with S.W. & N.S." (Exhibit 199, pp. 10, 18). Although Mrs. Stevens testified that she had no recollection of this meeting, in light of Miss Walker's evidence and the documentation relating to the meeting I find that Mrs. Stevens reviewed and finalized financial statements for the bond group in this period.

Mr. Leiderman, auditor for all the bond group companies, testified that during 1980–84 Mrs. Stevens performed administrative and management duties in relation to general business matters for the York Centre group of companies. He testified that after October 1984 her role changed to a certain extent, and she became more involved in the management of the company. At this point, he saw her as part of management at York Centre.

I find that Mrs. Stevens was the driving force behind new initiatives in the bond group and, further, that she was part of the decision-making process around the sale of the bonds in August 1985. Her role in the bond group can only be described as that of senior management and was certainly not confined to that of solicitor.

Raising of Cash and Dealing with Creditors

The most important activities for the York Centre companies were the raising of cash and dealing with creditors. In the period prior to October 1984, as an officer and director of the companies, Mrs. Stevens entered into debt obligations on their behalf for the purpose of raising cash for the companies. It is significant that on at least some occasions both Mr. and Mrs. Stevens were involved in the same transaction. For instance, when the Hanil Bank advanced $1 million to Cardiff Construction, Mr. Stevens was involved in making the initial contact with the bank and was actively involved in determining what security would be given for the loan. For her part, Mrs. Stevens signed the guarantee and postponement of claim on behalf of Cardiff on August 12, 1983, as security for this loan. She also signed for Clady Farm and Alton Mills. On December 2, 1983, and June 26, 1984, she signed debentures for $950,000 and $600,000, respectively, to Guaranty Trust on behalf of Cardiff and Alton Mills. On both occasions it was the intervention of Mr. Stevens that led to the advances from Guaranty Trust. All three loans led to paydowns on the CIBC account.

While her husband was minister, Mrs. Stevens, through her activities at Cardiff, raised significantly more cash for the whole York Centre group of companies than was raised through any other activity of the companies. The two single most important Cardiff transactions were the Czapka loan and the Equion real estate limited partnership. Mrs. Stevens signed documents on behalf of Cardiff for the Czapka loan. With regard to the limited partnership, she signed documents on behalf of the general partner, a numbered company which held in trust the partnership moneys borrowed from Guaranty Trust, and she signed the $700,000 loan commitment letter with Guaranty Trust on behalf of Cardiff. Both of these transactions led to paydowns on the CIBC account.

On three occasions in 1985 Mrs. Stevens had meetings with senior officials of CIBC, the principal creditor of the York Centre group of companies, which was putting pressure on the companies to reduce their debt by January 31, 1985. In January 1985, shortly before this deadline, Mrs. Stevens and Mr. Rowe met with Mr. Peter Cole and Mr. Greg Morris of CIBC's head office. Mr. Cole testified that Noreen Stevens was introduced as a senior officer dealing with the daily affairs of York Centre.

Mrs. Stevens, who, according to the CIBC officials, was in control of the discussion while Mr. Rowe was largely an observer, reviewed the status of the accounts and the condition of the companies involved and then presented forecasts relating to the proposed general steps to be taken to reduce the indebtedness to the bank. Her commitment, demeanour, and obvious knowledge led both bankers to be more comfortable with the account and to conclude that she was sufficiently proximate to the daily working of the company to control the situation and effect the promise to reduce the debt. In fact, Mr. Cole testified that it was his understanding that after Sinclair Stevens took office, it was first Mr. Rowe and then Mrs. Stevens who managed York Centre.

When confronted with the understanding of the bankers as to her role at York Centre, Mrs. Stevens testified that "I considered myself accompanying Mr. Rowe, the President of the company, to a serious meeting with the bankers. If I could help him in any way, I was there to be of assistance" (Transcript, vol. 65, p. 11,064). Mrs. Stevens conceded that at the meeting she may well have given her own interpretation of the current status of the accounts and the negative cash flow, produced a forecast for debt reduction, and made the presentation to the bankers. I find that Mrs. Stevens' participation in the meeting went well beyond "assistance" to Mr. Rowe. I find that she took charge of the meeting.

On May 7, 1985, Mrs. Stevens and Mr. Rowe met again with senior officials at CIBC. At this time Mrs. Stevens presented a specific proposal, which she had prepared with the assistance of Mr. Rowe and Mrs. Foulkes, for the reduction of the debt. She represented to officials that serious negotiations were in progress to obtain financing by way of a private mortgage. Mrs. Stevens expressed the hope that these negotiations would be concluded in the near future and that a considerable sum of money would then be available to retire the debt. In the interim, to cover pressing payables, Mrs. Stevens requested that the bank extend an additional $200,000 in credit to York Centre. Mrs. Stevens testified that her reference to negotiations was to the Czapka loan. Mrs. Stevens agreed that once the bank received $1.4 million of the proceeds from the Czapka loan, the bank was more relaxed. Mr. Cole testified that this payment was a significant event in ameliorating the bank's concern about the companies' indebtedness.

Mrs. Stevens and Mr. Rowe held a third meeting with Mr. Morris of the CIBC in December 1985. The purpose of this meeting was to request an increase in the line of credit available to the companies. As the amount was within the regional limits, they were advised to direct their request to the branch office. Subsequently, they met with branch officials and reviewed the companies' financial requirements into 1986. Mrs. Stevens presented the proposal that the line of credit be extended by $100,000 to facilitate the rebuilding of a barn that had been destroyed by fire as well as to provide capital for establishing real estate joint ventures in which one of York Centre's companies would act as arranger and manager of the limited partnership. Internal bank records show that Mr. Wagg, branch manager and a person who had monitored the accounts closely, recommended that the request be approved, partly on the basis that "since Mrs. Stevens' direct involvement with the day to day affairs of York Centre, our position has improved considerably"; moreover, he considered the increase to be "justified based on the improved management provided to the company over the past few months" (Exhibit 109, p. 157). In his testimony before the Commission, Mr. Wagg confirmed his belief that Mrs. Stevens was directly involved in the day-to-day affairs of York Centre.

Two things are noteworthy about Mrs. Stevens' contacts with CIBC. First, her role at these meetings was largely that of a "troubleshooter." As her husband had done previously, Mrs. Stevens became involved in negotiations with CIBC at the point where the bank's pressure on the companies to repay their debt was intense. Secondly, her participation with the bank went beyond crisis management and involved her in negotiations of comparatively small sums of money to be advanced for operational expenses and business initiatives. I find that CIBC correctly concluded that Mrs. Stevens managed the affairs of York Centre.

The Search for Financing

During the Inquiry, the phrase "the search for financing" referred to the events from October 1984 to August 1985 in which Mrs. Stevens and Mr. Rowe approached certain Bay Street firms and individuals in an attempt to find financing for York Centre. These events are, of course, related to the raising of cash and dealing with creditors. Apart from the First Interstate Bank proposal in the summer of 1985, Mrs. Stevens was involved in meetings about the Richardson Greenshields proposal prepared in the fall of 1984 and four proposals prepared by Gordon Capital in the spring and summer of 1985.

Richardson Greenshields

In the fall of 1984, Richardson Greenshields developed a proposal for financing York Centre. On October 23, 1984, Mrs. Stevens, along with Mr. Rowe and Mr. Leiderman, met with Mr. Jim Davies and Mr. William (Bill) Volk of Richardson Greenshields to discuss the proposal. In early November 1984 Mrs. Stevens and Mr. Rowe went to a meeting with Mr. Eyton and several others where the proposal was again discussed. On November 29, 1984, Mr. Davies met with Mr. Rowe and Mr. Cole of CIBC to discuss the proposal. I accept the evidence of Mr. Davies that Mrs. Stevens was in attendance. (Mr. Cole, who was not asked whether she was at this meeting, testified that he first attended a meeting with Mrs. Stevens in January 1985. Although Mrs. Stevens thought it was possible she was at this meeting, she could not recall it.) Mrs. Stevens met with Mr. Matthews of Burns Fry and Mr. Davie of Dominion Securities at the York Centre offices in February 1985, at a time when those firms were considering a York Centre financing. The Richardson Greenshields proposal was unsuccessful and was abandoned.

Gordon Capital

In the spring of 1985 Mrs. Stevens met on a number of occasions with Ms. Jo Bennett of Gordon Capital in regard to York Centre financing. On March 8, 1985, Mrs. Stevens had lunch with Mr. Rowe and Ms. Bennett, who testified that they discussed what was going on in York Centre and "what Mrs. Stevens was trying to do with reorganizing [York Centre's] real estate, and she needed the names of a couple of bright ladies to come and sell some of the partnership she was setting up" (Transcript, vol. 23, p. 3855). Over the next several months Ms. Bennett prepared four proposals for financing York Centre that were discussed at a number of meetings — most of which, if not all, Mrs. Stevens attended. By June, when none of the other proposals had met with success, it was decided to attempt straight equity financing.

On June 13, 1985, Ms. Bennett sent Trevor Eyton the York Centre draft for straight equity financing, indicating that Noreen Stevens "has requested a firm commitment by June 21" (Exhibit 160, p. 57). Although Mrs. Stevens testified that she could not recall making such a request, Ms. Bennett in her testimony reiterated what was in the letter. I find, based on this testimony and the letter, that Mrs. Stevens did indeed make such a request. On July 5, 1985, there was a meeting of Noreen Stevens, Ted Rowe, Jo Bennett, Trevor Eyton, and Ken Clarke of Great Lakes to discuss the straight equity financing proposal. Subsequently, at a meeting convened by Mr. Eyton on August 7, 1985, of representatives from Great Lakes, Burns Fry, Gordon Capital, and Dominion Securities, it was decided that financing was not feasible.

When asked by her counsel to describe her role in the search for financing, Mrs. Stevens replied:

> Generally, my role is and always has been that of a solicitor. That is my training; that is my background. I was assisting Mr. Ted Rowe, who is President of York Centre Corporation. Mr. Rowe is very young. He has limited experience in financing and financial matters, but he is very good. Any time he would ask me to assist him or to attend meetings with him, I would try to go with him to see if I could be of any assistance to him.
>
> (Transcript, vol. 62, p. 10,620)

Although she testified that her role in the search for financing was that of a solicitor, in cross-examination Mrs. Stevens conceded that she had not sent a legal bill to York Centre in regard to this work or the meetings with Mr. Leiderman but that she intended to. When reminded that she had sent legal bills for other work done since the search for financing ended, Mrs. Stevens insisted York Centre would still be billed. Although she had not kept any time dockets, and one-and-a-half years had elapsed, she testified that she would know the amount by reviewing her files. She admitted that she kept no specific files on the financing initiatives or the meetings with Mr. Leiderman. I have grave doubts in the circumstances whether Mrs. Stevens intended, at the time of undertaking these efforts, to render a solicitor and client account.

The impression of Mrs. Stevens held by the bankers and the auditor was shared by others. Mr. Davies of Richardson Greenshields was asked by counsel for Mrs. Stevens whether it was fair to characterize her role as that of a solicitor for the York Centre companies. Mr. Davies declined to do so and testified that "I would perhaps go a little further than that. I would characterize it as being a legal and financial adviser" (Transcript, vol. 23, p. 3837).

Ms. Bennett of Gordon Capital testified that Mrs. Stevens and Mr. Rowe were her main contacts at York Centre throughout her efforts to raise financing for the company and that Mrs. Stevens participated in the various meetings and was knowledgeable about the matters discussed. When asked what Mrs. Stevens' role at York Centre was when she first met her five or six years before, Ms. Bennett replied:

> Financial and legal. She had a very, very good grasp of the day-to-day operations of York Centre and of the financing requirements

> with the basis of [Royal Cougar]. Like a shoe store has an inventory of shoes, they had an inventory of bonds that had to be financed.
>
> . . . .
>
> [S]o she was organizing that day-to-day financing and, of course, the trick is to do it a little cheaper than just going to your friendly bank manager at prime plus ten.
>
> (Transcript, vol. 23, pp. 3840–41)

Mr. Rowe testified that in the search for financing, Mrs. Stevens was part of the management team attempting to put a deal together.

Although Mrs. Stevens sought to minimize her role in the search for financing, the evidence overwhelmingly established that she was a central decision maker in these events. It is telling that Ms. Bennett described her as setting up real estate partnerships and as being involved in day-to-day financing. This is clearly the description of a person involved in management activity in a business of this kind.

Relationship and Activities with Miss Walker

The evidence relating to Mrs. Stevens' working relationship with Miss Walker during 1984–86 establishes the detailed nature of her day-to-day management activities. It also establishes that Mrs. Stevens and Miss Walker kept each other informed about York Centre matters and that on some occasions they were co-managers. It is significant that these dealings occurred when Miss Walker was governed by the same guidelines as Mr. Stevens.

Although Mrs. Stevens admitted that she communicated with Miss Walker during working hours while Miss Walker was a special assistant to her husband, Mrs. Stevens asserted that she "did not provide her with much information at all" (Transcript, vol. 66, pp. 11,245). Further, Mrs. Stevens denied that the information in many specific diary entries of Miss Walker came from her. In fact, when questioned by her counsel, she expressed surprise that Miss Walker "had kept track of so many things" (Transcript, vol. 62, p. 10,538), although in cross-examination she said it was "not unusual for Miss Walker to keep tabs on me, too" (Transcript, vol. 64, p. 10,888).

Mrs. Stevens did testify on a number of occasions that Miss Walker was a resource person for the companies and that, as a result, she would be the most appropriate person to consult for information. For instance, in December 1984 Mrs. Stevens referred Mr. Hopkins to Miss Walker in regard to the sale of a Calgary property and land in Oakville. Mrs. Stevens testified that she kept Miss Walker informed of the progress of these sales because other people would be contacting Miss Walker about them and "[b]ecause I would want her to know that the funds were not available or would be available" (Transcript, vol. 66, p. 11,370). She testified that she used Miss Walker as an expediter in these transactions "through sheer force of habit and knowing it would be done" (Transcript, vol. 66, p. 11,373). In January 1985 Mrs. Stevens dealt with Miss Walker in regard to Royal Cougar's trade-mark application for "Cougar." When asked why she would have involved Miss Walker in this transaction, Mrs. Stevens testified that Miss Walker "had always taken care of looking after the trade marks" (Transcript, vol. 66, p. 11,329).

Evidence established an ongoing close working relationship between Mrs. Stevens and Miss Walker. For example, in September 1984 Miss Walker reported to Mrs. Stevens that Equibank had seized the accounts of Sentry and Cumberland on deposit with it and applied these amounts to its loan to Sentry. The bank also indicated that any further deposits on this account would be applied against the loan as permitted by the security agreement. In November 1984 Mrs. Stevens drafted a letter to Equibank which outlined a proposal for handling interest on the loan and a promise to pay the interest arrears of $2200 by early December. In December 1984 Mrs. Stevens supervised Miss Walker's payment of $2200 to Equibank.

The Commission heard other evidence of their working relationship. In January 1985 Miss Walker sent Mrs. Stevens a memo regarding the need for York Centre/Canalands to acquire more shares in Sentry. This purchase was necessary to ensure that Sentry maintained the required level of Canadian ownership to be eligible for the continued payment of Petroleum Incentive Program grants. Mrs. Stevens testified that Miss Walker was the resource person who always kept track of the shareholdings required for control. In June 1985 Miss Walker sent another memo on this matter to Mrs. Stevens, asking her to amend or approve the attached paperwork for the acquisition of additional Sentry shares by York Centre. Mrs. Stevens testified that she appreciated the work Miss Walker was doing in this regard and assumed that they would have discussed the matter, but she could not recall a specific conversation.

Another example of their working relationship occurred at the end of August 1985, when Mrs. Stevens handled the payment and discharge of the debentures Maynard Energy had from York Centre and Canalands. The cheques in the amounts of $406,575.34 and $203,287.67 went out with a letter, drafted by Mrs. Stevens prior to her departure for Asia with her husband. The cheques were signed by Miss Walker. Mrs. Stevens testified that it was possible, but that she did not recall discussing the payment of these debentures with Miss Walker.

Other examples exist. The evidence establishes that Mrs. Stevens and Miss Walker worked together on York Centre affairs on a continuing basis. When Mrs. Stevens was asked whether she was surprised that in August 1985 Miss Walker was still doing banking for York Centre, she replied:

> On an administrative basis, not to that extent, although it does surprise me to an extent, now that it has come forward, how much she was involved.
>
> . . . .
>
> [Although on an administrative basis she would not be surprised that Miss Walker] had something to do with Mrs. Foulkes in trying

> to wrap up some of these matters that were in place before she left the company.
>
> (Transcript, vol. 66, pp. 11,296–97)

Mrs. Stevens testified that she knew Shirley Walker had resigned her positions as an officer and director in the York Centre group of companies in October 1984. She also testified that she did not know whether Miss Walker was covered by the conflict of interest guidelines and code and the requirement to dissociate from private activity. When confronted with Miss Walker's evidence that Mrs. Stevens knew Miss Walker was to dissociate herself from York Centre pursuant to the guidelines, she conceded that Miss Walker's evidence might be true. She admitted that she knew Miss Walker was helping Mrs. Foulkes, the bookkeeper, in a transitional manner. When asked whether it was her assumption that "at a given point in time Shirley Walker was no longer associated with York Centre or doing any of its work," she replied, "Yes. Do not ask me what the time was because I do not know, but I assume that some time she was free of the management or whatever she was doing with York Centre and was working with my husband's office" (Transcript, vol. 63, p. 10,792).

This statement must be assessed in light of overwhelming evidence that Shirley Walker did not dissociate herself from the York Centre group of companies while she was a special assistant to the minister and that she continued to attend to York Centre affairs even after the minister resigned.

In light of evidence indicating that Mrs. Stevens continued to work with Miss Walker even in late 1985 and 1986, I reject Mrs. Stevens' testimony that she assumed that at some time Miss Walker was "free of the management" she previously undertook for York Centre. As noted earlier in this chapter, she met with Miss Walker and Mr. Leiderman in November 1985 and January 1986 in regard to the bond companies. Also, from the fall of 1985 onward, Miss Walker's diary contains frequent entries about the La Ronge goldplay, including Sentry's eventual involvement with Mr. Netolitzky, Giant Yellowknife, and SMDC. Although Mrs. Stevens admitted that she was the main contact at Sentry with regard to these events, she testified that she was unable to account for their presence in Miss Walker's diary.

During December 1985 and January 1986 Miss Walker made frequent entries in her diary regarding Cardinal Carter, Chase Manhattan, and the Christ coin proposal. For instance, Miss Walker made a note regarding a book which Mrs. Stevens wanted for Mr. Stewart of Chase Manhattan. Mrs. Stevens testified that either she or Mrs. Foulkes had asked Miss Walker to find this information.

I find that the details in the diary entries regarding the La Ronge goldplay and the Christ coin proposal reflect information passed to and from Mrs. Stevens and Miss Walker or between Mr. Stevens and Miss Walker. However, in relation to these entries I am unable, given the testimony of Mr. Stevens, Mrs. Stevens, and Miss Walker, to identify which of the specific entries can be attributed to information passed to Miss Walker by Mrs. Stevens and which to information passed by Mr. Stevens.

In reviewing the evidence and considering it in its totality, I find that Mrs. Stevens was aware of Miss Walker's dealings with the York Centre group of companies throughout the period she was a special assistant to the minister and that Mrs. Stevens continued to work with her and provide her with information in regard to these companies. Indeed, any other finding is inconceivable in light of the demonstrated involvement of both Mrs. Stevens and Miss Walker in the affairs of the York Centre group of companies throughout this period. I also find that Mrs. Stevens was aware of Miss Walker's duty to dissociate from York Centre. She must be taken to have known that continuing to work with Miss Walker impaired the discharge of that duty.

Yet Mrs. Stevens testified that she did not see anything inappropriate in providing information about York Centre affairs to Shirley Walker or receiving information from her during 1984–86. Further, she did not find Miss Walker's activities at York Centre inappropriate and never addressed her mind to whether Miss Walker should be undertaking these activities while acting as special assistant to the minister.

Conclusions

I find without hesitation that during 1984–86 Mrs. Stevens performed management functions for the York Centre group of companies that went well beyond the role of a solicitor. Further, I find that Mrs. Stevens did not perceive herself to be acting solely as a solicitor. Any other conclusion is inconsistent with Mrs. Stevens' conduct: her negotiations with CIBC, her role in important business initiatives undertaken by the York Centre group of companies, and her role in the search for financing, including her failure to keep files or remit accounts for these efforts.

Indeed, I am unable to find, based on the evidence and the character and demeanour of the witnesses, that during this period there was anyone with more authority than Noreen Stevens at York Centre. Certainly, neither Mr. Rowe nor Miss Walker was senior to her. It is revealing that Mr. Rowe, who Mrs. Stevens described as being "very young [with] limited experience in financing and financial matters," was not present at the meetings Mr. and Mrs. Stevens had with Mr. Leiderman where fundamental matters concerning the corporation were discussed. I have no doubt that during 1984–86 Mrs. Stevens was one of the two or three people who managed the York Centre group of companies in the sense of being its directing mind.

Communication between Mr. and Mrs. Stevens

Mr. and Mrs. Stevens denied that they discussed York Centre affairs. This general denial was accompanied by a number of explanations as to why such communication did not take place. These explanations ranged from a lack of interest in the subject matter to Mrs. Stevens' obligation as a solicitor to keep confidential information pertaining to her clients. The allegations raise directly the issue of whether Mr. and Mrs. Stevens communicated in regard to the Czapka loan, the search for financing, and the raising of cash for the companies. With respect to each of these allegations, Mr. and Mrs. Stevens have denied that they had any specific communication.

To determine whether Mr. and Mrs. Stevens communicated about the affairs of the York Centre group generally, and more specifically the matters raised in the allegations, I intend to consider evidence, direct or circumstantial, of occasions on which they communicated, the circumstances of such communication, and the reasons offered as to why they did not communicate on other occasions.

Evidence of Communication

Mr. and Mrs. Stevens admitted participating in certain events that I have already found related to the current affairs of the York Centre group of companies, in particular the meetings with Mr. Leiderman on March 16, 1985, and April 13, 1986; with Mr. Busby on October 11, 1985, and with Mr. Netolitzky on November 27, 1985, in relation to the La Ronge goldplay; and the approach to Cardinal Carter in December 1985 and the meeting with Chase Manhattan on January 17, 1986, in relation to the Christ coin proposal.

Mr. and Mrs. Stevens discussed management matters with Mr. Leiderman at the March 1985 meeting, including corporate reorganization and refinancing in terms of the current financial condition of the companies. At the April 1986 meeting with Mr. Leiderman they again discussed management matters, including intercompany loans and balances and how York Centre's balance sheet could be strengthened. There was also a discussion of recent financial developments. Further, they communicated before and after both meetings about the matters discussed.

Mr. and Mrs. Stevens were jointly involved in the development of the La Ronge goldplay and the Christ coin proposal. I have found in regard to the La Ronge goldplay that Mr. Stevens made the contacts with both Mr. Busby and Mr. Netolitzky. Mrs. Stevens followed through on the initiative. In these circumstances, I have already found that Mrs. Stevens kept Mr. Stevens informed as to the progress of the initiative and that they acted together in the development of the La Ronge goldplay.

Mr. and Mrs. Stevens admitted acting together on the Christ coin proposal. In December 1985 Mr. Stevens called Cardinal Carter and Mrs. Stevens followed up with a letter to him. At that time they had discussions with regard to the call and the idea. They had further discussions prior to the meeting with Chase Manhattan on January 17,

1986. They both participated in the discussion of the Christ coin proposal at this meeting.

I find that in both the La Ronge goldplay and the Christ coin proposal, Mr. and Mrs. Stevens were functioning as business partners acting in the interests of the York Centre group of companies and that they communicated as such. The incidents involving Mr. Kierans and Mr. Leung are other examples of occasions where they were jointly involved as business partners seeking advice with regard to a major asset — the Georgian Trust bond portfolio.

In summary, the evidence establishes that Mr. and Mrs. Stevens communicated with each other in regard to at least five events relating to the York Centre group of companies: the Leiderman meetings, the La Ronge goldplay, the Christ coin proposal, and the meetings with Mr. Leung and Mr. Kierans. This communication was as business partners and concerned management affairs, including financing, reorganization, intercompany loans, and new initiatives for the companies.

Circumstances of Communication

The circumstances surrounding these events are relevant in assessing whether the incidents of proven communication between Mr. and Mrs. Stevens ought to be viewed as discrete and isolated or as evidence of a willingness to discuss York Centre affairs.

The events thus must be assessed in the context of the serious financial condition of the companies in this period, companies which were the primary investment of the Stevens family. Also to be remembered is that Mrs. Stevens occupied a central decision-making role at York Centre, which included dealing with the immediate and pressing problem of ensuring the survival of the companies, and that, as a result, she not only knew about the problems and the efforts taken to resolve them, but also bore some of the responsibility to resolve them. Moreover, she shared with Mr. Stevens the responsibilities in this regard. I have already found that, prior to his entry into the cabinet, Mr. Stevens had a direct role in the financing and the maintenance of credit facilities for these companies in which he had a personal stake.

I have also found that when Mr. Stevens entered the cabinet he was aware of the financial difficulties of the companies. Their primary need was cash in the form of new equity or loans. While he was a minister, Mr. Stevens continued to be aware of the serious financial condition of the companies and their deterioration over the next year. Certainly at the March 1985 meeting with Mr. Leiderman he was aware of the need for money. Indeed, at his meeting with Mr. Dunn in Singapore two weeks prior to the meeting with Mr. Leiderman he actively solicited new equity for one of the companies. Further, in the summer of 1985 Mr. Stevens assisted Mrs. Stevens in her attempts to use the bond portfolio to raise money. These events establish that Mr. Stevens was not only aware of the need for funds but was also actively involved in their solicitation.

Another crucial circumstance surrounding these events is the lack of an understanding between Mr. and Mrs. Stevens as to what, if any, information regarding York Centre affairs Mr. Stevens could receive. Although both Mr. and Mrs. Stevens testified that they had a discussion and understanding when he became a minister that Mrs. Stevens would not represent a company that had anything to do with the government, neither testified that this conversation touched on any other restraint that might be placed on the minister or his spouse regarding information about, or activities with, York Centre.

As noted in Chapter 17, there was also no understanding between Miss Walker and Mr. Stevens about what communication between them, if any, was permissible regarding York Centre affairs. I have already found that they discussed York Centre matters. Similarly, I have already found that Mrs. Stevens continued to work with and provide information to Miss Walker while she was a special assistant and covered by the same guidelines.

The lack of an understanding between Mr. and Mrs. Stevens regarding communication about York Centre affairs is apparent from an examination of the incidents of proven communication. These incidents involved discussions about all areas of investment activity of the companies. Indeed, rather than being discrete or isolated incidents, these events show a coherence in that they all reflect different efforts to bring cash into the companies, or to ameliorate the appearance of financial difficulties, or to establish new investment initiatives. An assessment of these incidents of proven communication in light of activities undertaken by Mr. Stevens without Mrs. Stevens, which show an ongoing interest and involvement by him, further rebuts the notion that these incidents are isolated and discrete; examples of these activities include Mr. Stevens' approach to Mr. Dunn and his carrying on three to five occasions of York Centre material from Toronto to Ottawa.

During the course of their testimony I had occasion to observe that neither Mr. nor Mrs. Stevens reflected on or considered the propriety of their behaviour at the time they engaged in certain activities. Mrs. Stevens testified that it did not occur to her that her husband might be in a compromising situation when he discussed government and private business at Chase Manhattan in New York on January 17, 1986. Similarly, Mr. Stevens felt there was no conflict or appearance of conflict whatsoever in discussing government business and also the Christ coin proposal with Chase Manhattan. I would have thought such a situation would immediately alert a senior member of the bar or a senior cabinet minister to possible conflict of interest problems. Yet Mrs. Stevens testified that she had no discussion with her husband about whether he should be involved in the Christ coin activity in light of his position as minister.

It never occurred to Mrs. Stevens that it was inappropriate to be dealing with Mr. Eyton in light of his relationship with her husband's ministry. Mr. Stevens testified he never considered the propriety of his suggesting to Mr. Davies that he contact Mr. Eyton about York Centre: "I could not see then and I do not see anything now wrong with suggesting" Mr. Eyton (Transcript, vol. 74, p. 12,865). As for Mrs. Stevens' role in the search for financing, he did not consider it a relevant factor for even an appearance of conflict. "Only somebody with maliciousness," he said, would consider it relevant (Transcript, vol. 74, p. 12,879).

Mrs. Stevens had no concern arising from her husband's obligations under the guidelines about his presence at the March 16, 1985, meeting with Mr. Leiderman, "[b]ecause it had nothing to do with the government. It was a purely personal internal matter" (Transcript, vol. 65, p. 11,135). Mr. Stevens testified he "would be surprised if it was not permissible" for him to attend the meeting (Transcript, vol. 72, p. 12,547).

In light of his obligation as a minister not to mix government and private business and not to be involved in his private business affairs, any of these incidents should have set off alarm bells for either Mr. or Mrs. Stevens. Not only were they oblivious to the potential difficulties caused by any of these activities, but the evidence makes it clear that Mr. Stevens involved himself in these events without hesitation or resistance. There is no suggestion that his involvement was at other than his own initiative or that of his wife.

In summary, the circumstances surrounding the occasions on which there is evidence that Mr. and Mrs. Stevens communicated with regard to York Centre matters, combined with the character of the occasions themselves, may be itemized as follows:

- the York Centre companies were in serious financial difficulty;
- the companies represented the primary assets of the Stevens family;
- Mrs. Stevens played a significant managerial role in the companies;
- Mr. Stevens had previously been involved in all the companies, taking the lead in all their significant activities;
- Mr. Stevens was aware of the serious financial condition of the companies and the need for money, and on at least one occasion actively solicited new equity;
- there was no understanding between them as to what information, if any, about York Centre could be discussed;
- the incidents of communication between them about York Centre were not discrete and isolated events but rather showed a pattern of ongoing involvement, as the actual communication involved fundamental management matters;
- they had no sense of inappropriateness regarding the communication that did occur, and Mr. Stevens involved himself without hesitation or resistance.

Mr. and Mrs. Stevens' Explanations of Non-Communication

The admitted participation of Mr. and Mrs. Stevens in ongoing discussions regarding the Christ coin proposal appears to indicate free and open discussions between them regarding a commercial venture. However, they testified that they viewed this activity as a hobby. Mrs. Stevens said:

> I guess a lot of people like to talk about weather. We like to talk about this kind of thing. We like to talk about concepts, applications of different financial transactions to various situations, innovative things. It is something that we have always found very interesting in our lives. . . .
>
> We find new ideas, innovative ideas, very interesting, and something that we find very exciting, and we will go out and look for these things, look for answers. If we are on the trail of something we think is interesting, we will go down to the Public Library here in Toronto which has very extensive research. Actually, we will spend an evening in there researching certain things. That is the nature of our hobby. We enjoy that.
>
> (Transcript, vol. 62, pp. 10,519, 10,532)

The evidence indicates that these discussions had a practical purpose. For instance, Mrs. Stevens said that she had discussed with her husband for "quite some years" the development of the concept for strip bonds and that these discussions gave rise to the incorporation of Georgian Trust. In developing the strip bond idea, they approached lawyers, accountants, and brokerage houses and retained computer experts. Mr. Stevens testified that the Christ coin proposal "came out of our original stripped bond activity" (Transcript, vol. 74, p. 12,911). Mr. and Mrs. Stevens resisted calling the Christ coin a business proposal and preferred to call it a "concept," even though one scenario assumed a billion dollar (U.S.) value. However, a $5594.54 legal bill rendered by the firm of McCarthy & McCarthy to Georgian Trust, and paid by Georgian Trust, covered work to December 1984 in regard to the "gold coin investment proposal to be offered by Georgian Trust" (Exhibit 188, p. 6). Legal advice about a hobby would not be paid by a commercial enterprise. I have no hesitation, therefore, in finding that it was a business proposal and that their discussions regarding the concept were directed at how to make the concept commercially viable.

When Mrs. Stevens was asked by her counsel what constraints she had or felt with respect to discussing York Centre matters with her husband, she replied:

> A. First, I would say as a solicitor I do not discuss my clients' affairs with my husband or with anyone. I do try to maintain a professional confidentiality with my office.
>
> My husband was in the Cabinet. I knew he had resigned all his offices and directorships and I knew he should not and would not be having anything further to do with the management of any of the

> companies that he had been previously involved in. I did not involve him in those matters.
>
> . . . .
>
> Q. [D]id you discuss with him the management . . . of the York Centre group of companies from 1984 onwards?
>
> A. No, I did not.
>
> (Transcript, vol. 62, pp. 10,530–32)

I understand this evidence to mean that she felt constrained by her obligation of confidentiality to her client, the York Centre group of companies, and her understanding of her husband's duty to dissociate from his private interests while he was a minister. I intend to examine these explanations in detail.

During their testimony, Mr. and Mrs. Stevens advanced a number of other reasons as to why they did not discuss certain matters. These included a lack of interest, being too busy, and the fact that other people ran the companies. The explanations of being too busy and lacking interest are attempts to minimize matters that were clearly important to the companies and the financial well-being of Mr. and Mrs. Stevens. For instance, Mrs. Stevens characterized the effects of the Czapka loan on York Centre as "ongoing matters of administration, and they were in the hands of other people" (Transcript, vol. 67, pp. 11,615–16). This evidence is not credible in light of the evidence which establishes that she alone negotiated the loan with Anton Czapka and dealt with him thereafter. Further, the Czapka loan was not an insignificant event at York Centre; it was a transaction of substantial benefit. (The transaction is discussed in detail in Chapter 20.)

As to other people running the companies, I have already found that Noreen Stevens was a central decision maker for the companies. I have also found that Sinclair Stevens was at two meetings with Mr. Leiderman when important management matters were discussed, and that he was also central to the development of the Christ coin proposal and to Sentry's entry into a gold-mining investment.

Let me return to the two primary explanations offered for non-communication. With regard to the explanation that client confidentiality prevented communication, two facts raise the issue of whether this is a real or constructed explanation. First, Mrs. Stevens did not act solely as a solicitor for these companies and I have found that she did not perceive herself to be acting solely as a solicitor. Secondly, Mr. and Mrs. Stevens discussed matters which, if the duty of confidentiality applied, would not have been permissible. For example, with regard to the Christ coin proposal, Mr. Stevens testified that the issue of solicitor confidentiality never arose. Indeed, the Leiderman meetings are also an occasion when Mrs. Stevens discussed her clients' affairs openly with her husband.

The depth of Mrs. Stevens' disregard of her duty of confidentiality, if there truly was such a duty in the circumstances, is best shown by her continuing communication with Shirley Walker, a person who had no claim or right to receive any information in circumstances where she was not an officer, director, or employee of the companies. This is not to suggest that Mrs. Stevens, as a member of the bar, would ordinarily disregard this important ethical obligation. However, the evidence of actual communication between Mrs. Stevens and Miss Walker and between Mrs. Stevens and Mr. Stevens about York Centre affairs establishes that Mrs. Stevens did not perceive that Mr. Stevens or Miss Walker had dissociated themselves from the companies.

Mrs. Stevens made it clear in her evidence that, in her view, Mr. Stevens' duty as a minister with a blind trust to dissociate from York Centre was confined to a "management constraint," which meant that her husband could not make management decisions about the assets in the blind trust (Transcript, vol. 63, p. 10,788). She was much less clear as to whether any information about the companies could be conveyed to him. When asked whether the intent of the blind trust would be fulfilled if anyone informed her husband of the assets in the blind trust, she replied: "I cannot agree with that. It is simple knowledge; it is management that counts" (Transcript, vol. 63, p. 10,787). She also testified: "He would not be involved in the management of them. I do not know that it means he does not know anything about them. They are public companies; they have public financial statements" (Transcript, vol. 63, p. 10,785). When asked whether she felt free to convey information to her husband, she replied: "Not free in the sense of involving him in managerial decisions" (Transcript, vol. 63, p. 10,797). She conceded it was possible she felt she could divulge some things but not others, and that "what would come up in specific details I would address day-by-day depending upon what would arise" (Transcript, vol. 63, p. 10,798). Mrs. Stevens could offer no criteria beyond the "management constraint" for determining what information could be conveyed to her husband. I find that Mrs. Stevens believed there was no real impediment to communicating information.

I reject the explanations offered. In light of all the foregoing circumstances, I find that Mr. and Mrs. Stevens discussed York Centre matters freely and openly.

Chapter 19

General Conclusions about Mr. Stevens' Knowledge of or Involvement in Private Business Matters while a Minister of the Crown

I have now reviewed the evidence relating to the specific instances of Mr. Stevens' involvement in York Centre matters while he was a minister of the Crown: his meetings with Mr. Mel Leiderman, the York Centre accountant; his involvement in the La Ronge goldplay; his involvement in the Christ coin proposal; his meeting with Mr. Angus Dunn of Morgan Grenfell; his approach to Mr. Tom Kierans of McLeod Young Weir; his telephone call to Mr. Ken Leung of Olympia & York; the files of financial documents that were found in his Ottawa office; and his meeting with Mr. Ron Graham following the press reports on conflict of interest. I have also reviewed the evidence relating to the roles and activities of Miss Walker and Mrs. Stevens. In each of these areas I made a number of specific findings with regard to the nature and extent of Mr. Stevens' involvement in private business matters while he was in the cabinet. These individual incidents are not isolated and their cumulative effect must be considered. I find that the evidence, considered in its totality, establishes the following points.

Information Mr. Stevens remained fully informed of all important management and financial matters relating to the York Centre group of companies while he was a minister of the Crown. He had access to or was provided with information about the financial condition and the key financial developments in the York Centre group of companies.

Involvement Mr. Stevens did not withdraw from the York Centre group of companies. Even while he was a minister of the Crown, he remained actively involved in many key financial and managerial decisions relating to the York Centre group.

Role Mr. Stevens' role remained similar to the one he had exercised prior to entering the cabinet. Mr. Stevens continued as a central decision maker with regard to corporate reorganization, financing, and new investment initiatives.

Mrs. Stevens and Miss Walker Mr. Stevens exercised his authority at York Centre directly and indirectly through intermediaries. Both Noreen Stevens and Shirley Walker, with whom Mr. Stevens discussed

York Centre matters fully and freely, were important intermediaries through whom Mr. Stevens could give instructions or advice. His collaboration with Mrs. Stevens as intermediary and business partner is best shown by a pattern that emerged in the evidence. This pattern involved the minister making an initial contact ensuring access, with Mrs. Stevens then seeking specific advice or assistance.

I conclude that Mr. Stevens continued his involvement in the affairs of the York Centre group of companies fully and freely without regard to his responsibilities or obligations as a minister of the Crown.

Part Four

The Allegations of Conflict of Interest

I now turn to the allegations that led to this Inquiry. In this part I examine the conflict of interest allegations in detail and I do so under the following five headings:

1. the allegations relating to Magna, including the transaction with Anton Czapka;
2. the allegations relating to CDIC and Bay Street;
3. the allegations relating to Hyundai;
4. the allegations relating to the mingling of private and public business;
5. the allegations relating to compliance with the guidelines, code, and letter.

Chapter 20

The Allegations Relating to Magna

Nature of the Allegations

One of the principal allegations against Mr. Stevens is that, in his dealings as the minister responsible for DRIE, he was in a position of conflict of interest with regard to loans, grants, and other assistance from that department to Magna. These allegations stem from the fact that his wife, Noreen Stevens, had obtained a $2.62 million loan for Cardiff from a numbered company controlled by Anton Czapka, a Magna-related individual. In considering this allegation, I will deal first with the evidence relating to governmental assistance to Magna. In this regard the Commission had access to the files of DRIE and the minister concerning Magna. Hundreds of these documents were filed in evidence and 11 DRIE officials as well as several Magna officials gave evidence as to these documents and the dealings between Magna and the department. As well, evidence was received as to the mandate of the department, its structure, and its decision-making process. Each Magna application for federal assistance was scrutinized and will be discussed.

I will then deal with the events, circumstances, and relationships connected with the loan by Mr. Czapka's company to Cardiff and make my finding regarding conflict of interest. The last part of this chapter concerns the separate but related allegation that Mr. Stevens was in a position of conflict of interest in his dealings as minister with Magna's proposal to acquire an interest in Canadair.

Magna and DRIE

The IRD Program

On September 17, 1984, Sinclair Stevens became the minister responsible for the management and direction of DRIE. DRIE had the dual mandate of enhancing the national economy and promoting economic development in less advantaged areas of Canada. To carry out this mandate, DRIE received one of the largest allotments of discretionary funds budgeted in government.

The most important single program operated by DRIE for the delivery of direct financial assistance to industry was the Industrial and Regional Development Program (IRD program). Through this program, moneys were made available by way of grants, contributions, and repayable contributions to manufacturers or processors to assist them in developing new projects or processes, in establishing new production facilities, and in modernizing and expanding outdated facilities. The amount and type of assistance available depended on the economic development needs of the region. In an effort to acknowledge the needs of less advantaged areas, the applicants seeking assistance under the IRD program were grouped into one of four tiers. This tier system, based on population density and a development index, determined the range of activities the department was prepared to support and the rate of support. Toronto and its surroundings were located in tier 1 areas, where the most limited assistance was available. Shortly after taking office, on November 9, 1984, Mr. Stevens promulgated amendments to the regulations governing the IRD program designed to cut back levels of assistance in tier 1 areas. The effect of these amendments was to focus departmental efforts more clearly on regional development.

As of January 1985, 72 percent of the IRD program contributions in the province of Ontario were for projects involving government support of less than $100,000. Further, in the fiscal year 1984–85 there were 332 offers of assistance made under the IRD program in the province of Ontario for a total commitment of $174.7 million. In Canada, for the fiscal year 1984–85, the number of authorized projects under the program was 1464, with a total of $418,084,000 in authorized assistance. In the fiscal year 1985–86 the number of authorized projects fell to 714, with a total of $247,445,000 in authorized assistance. In Canada, some 94 projects were authorized for the auto parts sector from September 1984 through to May 12, 1986, for a total authorized assistance of $61,829,931.

Approval Process

To obtain assistance under the IRD program, the applicant filed an application, in a prescribed form, at the regional office. On receipt of the application, the regional office assigned a project officer to the application whose job entailed ensuring that the applicant was fully apprised of all the information required by the department to reach a final decision on the merits of the project. Only when the requisite information had been received would the project officer proceed with the application. This process might take several months, since complex financial and technical material had to be provided. Once the information was gathered, the project officer prepared a project summary that contained the essential details of the proposed project as well as the officer's views on its merits. This document was then transmitted to the advisory and decision-making levels within the bureaucracy and was the basis of all subsequent recommendations or approvals.

If the amount of assistance sought by the applicant was under $100,000, the regional executive director was authorized to approve the application. In Ontario, approval of projects at this level was on the advice of the Regional Investment Committee which met to review the merits of each application and give a recommendation. This committee was made up of a senior official of the Canada Employment and Immigration Commission (CEIC), a senior official from the Federal Business Development Bank, and senior regional DRIE officials, who advised the regional executive director.

If the applicant was seeking assistance over $100,000 but under $1 million, the regional executive director, through the Ontario Regional Investment Committee, would make a formal recommendation suggesting that the project should be approved or rejected. The application and the recommendation would then go to the minister of state for small business, one of the junior ministers of DRIE, who had authority to approve these applications.

An application for assistance in an amount over $1 million was assessed and a recommendation made at the regional level. The application was then passed to headquarters in Ottawa, where it was referred to the DRIE Internal Board and the Economic Development Board (EDB) for their recommendations. The DRIE Internal Board, composed of six members, was chaired by the associate deputy minister and included all the assistant deputy ministers in the headquarters area of the department. At its meetings, which were formal in nature, each project was considered and a recommendation was made as to whether the application should be granted or refused. Applications for under $1 million might also find their way to the DRIE Internal Board if they were identified by the department as politically or economically sensitive. In addition, as of January 27, 1985, applicants who had signed a "memorandum of understanding" with the department had to have all their applications dealt with by the DRIE Internal Board and the EDB. This was to ensure that each project, whatever the level of requested assistance, was assessed by the highest levels in the advisory process to determine if it furthered the overall goals set out in the memorandum of understanding.

The DRIE Internal Board did not have authority to approve or reject any project. It functioned solely to review the salient features of the project in order to come to its own recommendation. It would have been unusual for the DRIE Internal Board to recommend a project for rejection if it had been recommended for approval at the regional level. Decisions were reached at the DRIE Internal Board on the basis of a consensus, which often reflected the views held by the chairperson.

After the DRIE Internal Board had made its recommendation, the application was forwarded to the EDB. This board, composed of cabinet ministers, was brought into being in December 1984 by Mr. Stevens but was never given any formal terms of reference. In practice, the board sat to advise the minister on the acceptance or rejection of any application, but at all times the minister retained responsibility for the final decision to grant or refuse financial assistance under the IRD program. The minister was not bound to follow the recommendations put forward by any of these bodies. At all times during his term as minister, Mr. Stevens acted as chairperson of the EDB.

It was Mr. Stevens' style to conduct the EDB meetings in a collegial manner with full and open discussion. In preparation for these meetings, each member would receive the project summaries, without appendices, of the projects under consideration. In the ordinary course of events, each project was formally presented by the departmental officials, after which the minister called on his cabinet colleagues to express their comments and views. In conclusion, the minister would usually summarize, add his comments, and make a decision. If the minister decided to approve the application, it was his custom to make the decision at the meeting and sign the project approval form. No detailed transcript of the discussions at the meeting was made. However, a formal record of Mr. Stevens' decisions was kept.

Applications for assistance of $10 million or more had to be approved by the Treasury Board, a committee of cabinet ministers that oversees government spending generally. At all material times, Mr. Stevens was not a member of the Treasury Board. In addition, projects involving more than $20 million were submitted to the cabinet for approval prior to going to the Treasury Board. Cabinet at the time consisted of 40 ministers. However, unlike the DRIE Internal Board or the EDB, which considered even those applications recommended for rejection, the Treasury Board and cabinet would only deal with an application if the minister recommended approval of the project.

Mr. Stevens was described as a "hands-on" minister, in the sense that he became actively involved in the detail of the larger projects and was not hesitant to have his department follow up on his own ideas.

Magna as a Client of DRIE

Magna, under the chairmanship of Frank Stronach, is an auto parts manufacturer based primarily in southern Ontario which has achieved significant growth in sales over the past decade. It is generally accepted by officials at DRIE that Mr. Stronach has developed a unique corporate philosophy and management style, which emphasize small factories run by local managers as well as employee involvement and motivation through equity ownership and profit participation. Magna is the largest Canadian-owned auto parts manufacturer in Canada and, as such, is viewed by DRIE as occupying a unique place in the Canadian auto industry. No other company in Canada could be substituted in terms of the strategic role that DRIE envisaged for Magna in becoming a Canadian-owned manufacturer capable of delivering modular parts to large automobile manufacturers.

From 1972 to 1984 Magna received government grants and contributions under various predecessor programs of the Department of Industry, Trade and Commerce. The total amount of authorized assistance to Magna under these programs was $29.998 million. This assistance, with the exception of that made to Polyrim, was through non-repayable grants. The assistance to Polyrim was in part by way of a repayable contribution, contingent on the project reaching commercial production.

By the fall of 1983 Magna had grown to such an extent that it was difficult for the department to analyze Magna applications under the IRD program guidelines regarding "incrementality." These guidelines required an applicant to demonstrate that a proposed project would not be undertaken, owing to cost, location, or time factors, without government assistance. The difficulty arose because Magna was capable of developing projects of several million dollars without government assistance if it chose to devote corporate resources to such projects. This difficulty was exacerbated by Magna's decentralized corporate management style, which meant that the department received applications from the various corporate divisions without knowing which projects had priority in Magna's business activities.

During this same period, departmental officials believed that Magna was not well organized in its dealings with the government. This was especially the situation with regard to delays in preparing documentation necessary for final audits. These delays resulted in Magna's being in technical breach of its contract on a number of projects.

Development of the Memorandum of Understanding

In January 1984 Edward Lumley, minister of DRIE in the Liberal government, met with Mr. Stronach to discuss Magna's outstanding applications and the need to develop a memorandum of understanding (MOU) to provide a framework for future government assistance. Officials at DRIE had determined that Magna was central to their strategy for the Canadian auto parts industry, which they saw as having an unusual opportunity in 1984–85. In these years major new car plants were built or planned: expansion of General Motors of Canada Limited at Oshawa; construction of a new American Motors (Canada) Inc. plant at Brampton; and planned Canadian assembly facilities for Toyota Canada Inc., Hyundai, and Honda Canada Inc. To ensure that these plants did not become mere assemblers of components manufactured abroad, the federal and provincial governments were keenly interested in developing Canadian capacity to build parts and "modular units" for incorporation into finished vehicles. It was expected that once the original supplier relationships had become established, they would continue in place. Accordingly, it was of real importance that the Canadian parts manufacturers be ready to supply the new plants from the outset of production. Magna was seen by government experts as a key Canadian company in this strategy.

As Mr. Charles Stedman, director general of the Automotive, Marine and Rail Branch of DRIE, explained:

> Magna was absolutely critical in our strategy for the Canadian auto parts industry and the Canadian auto industry generally.
>
> . . . .
>
> It occupies a unique place in the Canadian auto industry in that . . . roughly 60 per cent of the Canadian auto parts industry are subsidiaries of the big four auto assembly firms, General Motors, Ford, Chrysler and AMC. . . . [O]nly 20 percent [of the balance] are Canadian controlled.
>
> . . . [I]n an environment in which the auto industry is very rapidly becoming international, in which new assembly plants were being planned for North America . . . and . . . in which the big four were out-sourcing parts more and more, that is they were making fewer of their own parts and buying more from independent contractors. . . . That 20 per cent Canadian-owned sector . . . was very largely very small firms and just did not have the capability . . . to undertake that kind of approach. There are only two or three companies that are Canadian owned that have the ability to do that kind of work and Magna was the most important of those.
>
> (Transcript, vol. 30, pp. 5087–89)

In the months following January 1984 Magna developed, at the department's request, a five-year business plan. In pushing for the development of this plan, departmental officials believed that this process would require Magna to assess its priorities and assure the department that Magna had the planning and management capability to carry out its projected plans for growth. From Magna's perspective, the advantage of a MOU was an implied assurance that projects would be processed expeditiously and that funds would be available for projects which furthered the goals of the MOU.

After Magna had delivered its five-year business plan and Mr. Lumley had reviewed the proposed MOU with his senior officials, he signed the MOU with Magna on August 27, 1984. The MOU was not a legally binding contract but a statement of intent. Its purpose was to provide a framework for the delivery of governmental assistance to Magna over a five-year period in such a way as to assist Magna in becoming an integrated supplier of major component subassemblies for car manufacturers. It was contemplated and understood by both Magna and the department that Magna would make a capital investment of $500 million over the five years, of which 10 percent would come from the department. The MOU stipulated that 40 percent of this investment would be for innovation projects and that government assistance would be in the form of interest-free loans which were to be repaid, except in the case of assistance to innovation projects which failed to reach commercial production. An underlying assumption of the MOU was that the government assistance would raise the financial capacity of Magna for strategic growth, and that not all the projects funded under the MOU could have been proceeded with on a timely basis by Magna without government assistance.

The existence of the MOU did not remove the minister's discretion as to the approval of individual projects put forward by Magna. The MOU, although listing certain projects, provided that each project had to be assessed and approved individually according to its merits. The MOU did not itself approve any specific project. The only significant difference for projects assessed under the MOU was that they did not have to be evaluated as to their incrementality. In the case of Magna, the incremental nature of the projects was recognized in the MOU and so it was not necessary for Magna to demonstrate that a particular project would or would not be undertaken without government assistance. The MOU meant that the department would give priority to projects listed in the agreement which had a high degree of risk and a relatively low return on investment.

Magna, the only company in the auto parts sector to be asked to sign a MOU, received substantial contributions from the government after 1972. This assistance accelerated its growth. The history of federal government assistance to Magna during the period before Mr. Stevens became minister of DRIE and prior to the signing of the MOU is set out in table 20.1.

Relationship between Mr. Stevens and Mr. Stronach

Mr. Stevens and Mr. Stronach knew each other personally for a number of years prior to September 1984. While Mr. Stevens testified that they first met on a businessmen's trip to Switzerland in 1976, Mr. Stronach recalled that they met through Mrs. Stevens with whom Mr. Stronach served on the board of directors of the Big Brothers organization for York Region. On occasion, prior to Mr. Stevens becoming a minister in 1984, they had visited each other's farms, where they generally talked about economics and politics.

Mr. Stevens held Mr. Stronach in high regard as a hands-on, creative entrepreneur who had made a significant contribution to Canada. He shared his view of Mr. Stronach at a meeting of senior departmental officials on September 21, 1984, four days after becoming minister. Mr. Stevens identified him as an example, among others, of a businessman who was worthy of an award and directed his department to assess how Mr. Stronach's business approach could be utilized elsewhere. As a result of this meeting, Mr. R.E. (Bob) Brown, an assistant deputy minister at that time, asked Charles Stedman to prepare a briefing for the minister on Mr. Stronach. Mr. Stedman testified that hitherto he had received requests of this nature only concerning a company, never an individual. The department suggested to the minister that a suitable award for Mr. Stronach would be the Order of Canada or the Canadian Awards for Excellence. Mr. Stevens explained that he mentioned Mr. Stronach's name as an example in the context of establishing a program

Table 20.1 Federal Assistance to Magna, 1972–84

Project Number (Subsid. or Div.)	Date Authorized	Amount Authorized ($)
53/512–82 (Magna Int'l)	Feb. 1972	245,000
53/512–33 (Ram Air)	April 1975	83,000
53/512–35 (Prog. Aod.)	Sept. 1975	96,000
53/512–92 (Drive Mfg)	Oct. 1975	355,000
53/512–127 (Deco Auto)	June 1976	165,000
534–3349 (Polyrim)	June 1980	18,811,000
534–4610 (Power Motion)	June 1981	3,310,600
534–6449 (Litens)	Dec. 1982	2,737,500
534–7135 (Invotek)	June 1983	1,795,000
ILAP-232 (559300 Ont. Inc.) (Normark)		900,000
204049 (Polyrim)	Feb. 1984	1,500,000
	TOTAL	$29,998,100

Source: excerpted from Exhibit 69, p. 174

to give public recognition to business persons who have done well and made a contribution to Canada.

Sinclair Stevens nominated Frank Stronach for appointment to the board of directors of both CDIC and Fishery Products International and appointed him to the Cape Breton Advisory Committee. Mr. Stevens testified that in making these nominations and appointments it was his intention to place an entrepreneur and businessman on these boards who, he thought, could creatively build up a business. Further, Mr. Stevens believed that Mr. Stronach would be a counterpoint to more establishment-oriented individuals.

Mr. Stevens' admiration and respect for Mr. Stronach was generally well known to officials in the department, although they were unaware of any personal relationship between them. This view reinforced the high regard in which Magna was held by the department both at headquarters in Ottawa and at the regional office in Toronto. It was accepted by officials of DRIE that Magna performed well under the MOU and exceeded its planned employment targets as well as its targets for corporate growth in Canada.

Magna's Applications for Assistance in Ontario

On July 17 and 18, 1984, meetings were held between officials at Magna and the regional office of DRIE in anticipation of the MOU's being signed. Project applications, which had been frozen and therefore not processed or even filed while the negotiations regarding the MOU were underway, were discussed with a view to expediting their approval.

After the signing of the MOU on August 27, 1984, applications were processed in relation to seven smaller projects for which Magna sought governmental assistance under the IRD program. These projects, which included Maple, Thermag, Integram, Multimatic, Master Precision, Plydex, and Markham, were all directly contemplated by the MOU or were an acceptable variation thereunder and involved assistance in amounts ranging from $750,000 to $3.2 million. In each case, the project officer recommended that the department support the application, and the Ontario Regional Investment Committee, the DRIE Internal Board, and the EDB recommended that the application be approved in accordance with the project summary. These projects were all given final approval by Sinclair Stevens at meetings of the EDB. Three of these projects, Multimatic, Master Precision, and Integram, were approved on April 17, 1985.

Evidence called in respect of each of these projects indicated that the processing of these applications was a routine and non-contentious matter. Each application was fully assessed and fell within the terms of both the IRD program and the MOU. These projects, as well as Class A Stamping, and the relevant dates on which they were considered are set out in table 20.2.

Table 20.2 DRIE Assistance to Magna in Ontario

Project	Amount of Assistance (IRDP) Eligible Costs Total Costs (000s)	Application Received	Sufficient Information Received	Ontario Region Investment Committee	DRIE Internal Board	Economic Development Board	Sinclair Stevens Approval
Maple (Drive chains)	1,490 4,471 4,471	June 08 1984	December 20 1984	January 07 1985 Recommended	January 10 1985 Recommended	January 16 1985 Recommended	January 16 1985
Thermag (Heat exchangers)	826 2,481 2,481	June 12 1984	October 08 1984	November 05 1984 Recommended	January 10 1985 Recommended	January 16 1985 Recommended	January 16 1985
Integram (Seat cushions)	2,238 6,722 12,624	May 24 1984	February 20 1985	March 25 1985 Recommended	April 09 1985 Recommended	April 17 1985 Recommended	April 17 1985
Multimatic (Door hinges)	980 4,900 9,400	June 04 1984	February 14 1985	February 25 1985 Recommended	April 09 1985 Recommended	April 17 1985 Recommended	April 17 1985
Master Precision (Brake, clutch, etc)	1,815 9,075 14,075	June 13 1984	February 25 1985	March 25 1985 Recommended	April 09 1985 Recommended	April 17 1985 Recommended	April 17 1985
Stamping (Class A metal)	10,234 81,872 98,663	October 31 1984	November 18 1984	December 19 1984 Project has merit, DM recommends turn down	January 10 1985 Discussed	January 16 1985 Project Stayed April 17 1985 Recommended	April 17 1985
Plydex (Moulded panels)	750 2,252 19,771	June 12 1984	May 31 1985	July 02 1985 Recommended	August 06 1985 Recommended	August 09 1985 Recommended	August 09 1985
Markham (Modular doors)	3,204 9,613 9,613	September 04 1985	October 11 1985	February 03 1986 Recommended	March 06 1986 Recommended	April 16 1986 Recommended	April 16 1986

Source: Exhibit 73, p. 33

Mr. Stevens testified that it was extremely unusual for him to be informed of the status of any ordinary project unless the applicant felt he was being treated unfairly. Probably because of his interest in Magna, however, he received a memorandum dated December 27, 1984, from Mr. Gordon Ritchie, the associate deputy minister, regarding Class A Stamping which also described four Magna projects as being "small proposals for assistance [that] are relatively straightforward innovation projects that can be routinely processed. Detailed analyses of these are almost complete, and the projects will be presented for your approval in the near future" (Exhibit 70, p. 40). This information was provided to Mr. Stevens well before the projects were presented to him for approval. Major projects with any policy content were almost always discussed with the minister, sometimes on several occasions, before they were put into the formal approval system.

Magna, whose government dealings were extensive, was generally kept aware of the departmental attitude towards specific projects and their progress through the approval process. Magna, of course, was aware of the minister's authority in relation to granting requests for assistance under the IRD program.

Class A Stamping

On October 17, 1984, the regional office of DRIE received an IRD program application from Magna for assistance in establishing a Class A Stamping plant. This plant was to be designed to produce high-quality outer body skins for automobiles. The project, the largest capital project contemplated by Magna and identified in the MOU, was estimated to cost approximately $98 million. At the time the application was filed, Magna was seeking $40 million in federal assistance, a sum equal to 50 percent of eligible costs under the IRD program. The initial assessment by Mr. Robert Allison, the project officer, however, was that $20 million of governmental assistance would be sufficient to insure that Magna undertook the project. This reduced sum, he considered, would also induce Magna to seek a joint venture partner in order to spread the risk involved in this expensive capital project.

Most of the departmental officials dealing with this project felt it was important and meritorious. From the department's perspective, as the first plant of this kind belonging to an independent auto parts manufacturer in North America, it fit well into their strategic objectives for the development of the auto parts sector. As such, it should attract significant investment by Japanese automakers, as well as supply the existing assembly facilities of Ford, General Motors, American Motors, and Chrysler in Canada. It was believed that this project would promote indigenous industry, with all its concomitant benefits. The Class A Stamping plant was seen by many at both Magna and DRIE as central to Magna's own objective of becoming a supplier of major modular subassemblies to large automobile manufacturers.

Within weeks of filing the Class A Stamping application, and before it was introduced into the system of approval at even the regional level, a memorandum was prepared and sent through the appropriate channels to be presented to Mr. Stevens. In this memorandum Mr. Brown endorsed the recommendation to negotiate assistance to Magna for the Class A Stamping project in the amount of $20 million. This memorandum was then forwarded to the office of Gordon Ritchie, the highest-ranking responsible civil servant, who directed Mr. Brown to change the recommendation to that of rejection of the Class A Stamping application for assistance.

Mr. Ritchie considered the project to be too "rich," in that it involved the investing of almost $100,000 per job created, 10 times the average for the Ontario region at the time. A more typical IRD program application would ordinarily involve the investment of around $10,000 per job created. Another of Mr. Ritchie's reservations was the proposed departmental funding of the Class A Stamping project. On November 9, 1984, certain amendments to the IRD program had been brought forward designed to eliminate government assistance for capital expenditures in tier 1 areas. Mr. Ritchie was concerned that the assistance being requested was no longer available under the IRD program and, if grandfathered, was inconsistent with the new policies behind the amendments, which were designed to reduce moneys available to industry for capital expenditures in industrialized urban areas. The other option available to fund the project was through Section 17 of the Industrial and Regional Development Act. This section was not covered by any regulations, and Mr. Ritchie felt its use would establish a dangerous precedent for the department.

The last concern expressed by Mr. Ritchie related to the fact that the department had already provided assistance to Magna's intended customer of body stampings, which was obliged under the terms of the assistance to maintain a high level of Canadian content. As such, the market for stampings was established, entailing little risk to Magna, and a subsidy ought to be unnecessary. This raised concerns about the effect of such assistance, since some persons might consider it to be a double subsidy to Magna's customer. As a result of these concerns, the memo which ultimately went forward to Mr. Stevens expressed, under the signature of Mr. Ritchie, what had now become the formal departmental view: the application for assistance by Magna for a Class A Stamping plant ought to be rejected.

Mr. John Blackwood, the executive director of the Ontario region, also opposed governmental assistance for the project, in part agreeing with Mr. Ritchie and in part having his own concerns relating to the impact of a $20 million grant on DRIE's Ontario budget. He appeared to feel that "Ottawa" had imposed the 1984 Magna MOU on the Ontario regional office without providing the extra dollars necessary to finance it.

The direction by Mr. Ritchie to reject the project became the official departmental position which pre-empted the ordinary advisory processes. As a result, although the Ontario Regional Investment Committee discussed the project, as did the DRIE Internal Board, their recommendation, regardless of their views as to the merits of the project, was rejection of the application.

Moreover, within Magna itself the project was also controversial, although it was supported by Mr. Stronach. Those hesitant about the project felt that a capital outlay of such enormity was big enough to put the company's balance sheet at risk.

The Class A Stamping project was presented to the EDB on January 16, 1985. At that time the members of the board would have had before them the project summary as well as the departmental recommendation to reject the proposed $20 million of assistance. At this meeting Mr. Blackwood presented the project and spelled out for the ministers' consideration the key issues and implications of the project. The ensuing discussion did not disguise the fact that there were very different views held about the project.

After the department had presented its views, Mr. Stevens, as was his custom, called upon his cabinet colleagues. Mr. McMillan, who was the first to express his views, indicated concern about the regional allocation of funds and the fact that so much money was going to Ontario. He would have preferred to have a project of such a costly character in a more disadvantaged area in Canada. Mr. Kelleher did not take a strong position one way or the other. Mr. Siddon questioned whether the processes or technology involved in the project was of sufficient sophistication to warrant assistance of this magnitude. He was also concerned about the regional allocation of funds.

At the conclusion of these comments, Mr. Stevens summarized the discussion and reached a decision. He raised the possibility of the Ontario government's contributing 50 percent of the $20 million support under discussion, and directed the officials of his department to approach the Ontario government with this proposition. The formal disposition by Mr. Stevens at the end of the meeting was to defer the Class A Stamping application for later consideration by the EDB. It was understood in the department that Class A Stamping would be considered favourably by the minister if an arrangement with the province of Ontario could be reached.

Officials of DRIE then sought the participation of the Ontario government in the Class A Stamping project. When the province indicated it would look favourably at giving $10.2 million of assistance to the plant, Magna's application was returned to the DRIE Internal Board and then to the EDB, on April 17, 1985, with the recommendation that approval be granted for $10.2 million subject to an equal provincial contribution. The board received an update of the situation, ascertaining that the minister's earlier suggestion had been effected, and Mr. Stevens signed the approval for submission of the application to Treasury Board.

This matter was then prepared by DRIE as a submission to the Treasury Board, where it was dealt with on June 13, 1985. The

Treasury Board approved the project. Evidence indicates that Mr. Stevens was anxious to ensure the project was dealt with by the Treasury Board in June 1985. The Class A Stamping project is the only project brought forward by Magna in a formal application that was the subject of a departmental recommendation to reject.

Polyrim

In March 1980, under the Liberal government, Polyrim Mfg. Ltd., a Magna subsidiary, and the Government of Canada entered into a contribution agreement for a project involving reaction injection moulding for large plastic bumper parts and authorizing government assistance of over $18 million. To facilitate this project, regulations were passed to allow what was known as the Enterprise Development Board to administer the project. As a condition of support, the government, through the board, entered into a stock option agreement that gave the government until June 30, 1994, to exercise an option to purchase a one-sixth interest in Polyrim for one dollar; the interest could be immediately sold back to Polyrim for book value plus or minus 10 percent, depending on the circumstances. Under the contribution agreement, approximately $13 million of the government's contribution was repayable beginning on October 29, 1985, at the rate of 8 percent of gross sales for the fiscal year ending July 31, 1985, and every year thereafter until paid in full.

Stock Option

Early in 1984 Magna wanted to merge with Polyrim in order to make use of investment tax credits and income tax provisions permitting the carrying forward of losses. To permit this merger it was first necessary to remove the stock option. The government agreed that the stock option should be removed, on the basis that it was not in the business of taking equity interests in companies when no government interest was thereby served. Officials at DRIE negotiated a purchase of the option by Magna and an agreement was reached with Mr. Lumley, the minister of DRIE, to sell this option for $1,004,460 — an amount calculated pursuant to a formula set out in the stock option itself.

This agreement had not been formalized at the time of Mr. Stevens' appointment as minister. Departmental officials continued thereafter to take steps to complete the agreement, but significant delay was occasioned pending the final audit on the Polyrim project. All departmental officials who testified were of the opinion that agreement in principle had been reached as of the summer of 1984, prior to Mr. Stevens' appointment.

The stock option was finally cancelled by agreement dated July 30, 1985, signed by Mr. Stevens. There is no basis to suggest that he was in any way involved in the negotiation of this cancellation. The cancellation agreement itself required an amendment to the Enterprise Development Regulations, and this amendment was passed by the cabinet on the recommendation of the Treasury Board and Mr. Stevens as minister of DRIE.

Modification of Repayment Terms

The second issue which arose in the context of Polyrim was a request by Magna to "reprofile" the repayment of its debt to the government. Federal assistance of $18 million to Polyrim included a $5 million non-repayable research grant and a $13 million contingently repayable loan. Polyrim's agreement with the government required it to repay the $13 million to the federal government at the rate of 8 percent of its total annual gross sales for the preceding fiscal year commencing October 29, 1985. Because of the success of the project, the effect of this formula was that the total debt would be repaid within two years of October 1985.

DRIE was aware of Magna's desire to repay the debt over a longer period as early as April 1984, but the first formal request by Magna to postpone repayment (for three years until August 31, 1988) was made on May 2, 1984. A further request was made on September 20, 1984, to revise the terms of the contribution agreement to provide that the loan would become due when Polyrim achieved positive retained earnings, that it would be payable over five years in equal monthly instalments, and that it would remain interest free over the repayment period. Departmental officials took the view that no reprofiling of the debt should be allowed. They felt that Magna should live up to its commitments and that any release would be a mistake, especially since other agreements were being negotiated which included repayable contributions as a term of the agreement. Mr. Stevens may have been briefed on this issue during the fall of 1984 but he gave no direction to his department.

In spite of this initial position, departmental officials, without receiving any direction from the minister, gave consideration to Magna's request. They insisted, however, that in the course of the negotiations Magna pay interest at commercial rates on the outstanding debt. During this time, DRIE officials offered to look at extending the period of repayment beyond the contemplated two years provided the net present value of the repayment to the taxpayer was not adversely affected. As explained by Mr. Stedman, this meant that:

> Magna owed us interest on the outstanding balance as of October 29, 1985. That interest, as per the contract in 1980, was calculated at the Bank of Canada rate plus 2 per cent, which is a higher rate than the government's cost to fund in the sense that if the government was not getting the principal back, in effect, since they were running a deficit, the government would have to borrow the money.

> That meant that the government was in a better position, in a sense, to get the interest from Magna than it was to get its money back. So, from our point of view, it was a good deal as long as they wanted to keep paying the interest.
>
> That also applied to all the deferrals. As long as they could defer, it was all right.
>
> In calculating the net present value, we calculate the net present value based on the government's cost of borrowing money, which is a slightly different figure, slightly less probably. The standard calculation in recent years has been around 10 per cent, and it is set by Treasury Board, and all economic calculations for economic development projects in government are based around that number which is assigned to us.
>
> . . . .
>
> Q: So, insofar as you are talking about the Bank of Canada rate plus 2 per cent, the government would wind up making money on what, in effect, was a money-lending transaction?
>
> MR. STEDMAN: That is right.
>
> (Transcript, vol. 33, pp. 5869–70)

Departmental officials continued discussions with Magna officials through the winter of 1985 and spring of 1986, always on the basis that the government would realize the net present value of the repayment. Although Mr. James (Jim) McAlpine of Magna may have mentioned this issue to Mr. Stevens during a meeting in February 1986, Mr. Stevens gave him no encouragement other than to continue his discussions with the department.

As well, consideration was given by DRIE to using Polyrim payments to finance the Magna Cape Breton project. Mr. Brown testified that DRIE was interested in using Polyrim payments for Cape Breton because of DRIE's own budgetary problems, but concluded that to do so would be inconsistent with good financial practice in government.

Magna's request to reprofile the Polyrim debt was never approved by Mr. Stevens. Eventually, its proposal was formally rejected by the department in July 1986 after the minister had resigned.

Magna Cape Breton

Throughout the period that Mr. Stevens was minister, there were discussions and negotiations between Magna and DRIE concerning the establishment of Magna training centres in remote regions of Canada. These negotiations led to the signing of a MOU on June 14, 1985, and subsequently to an agreement signed on April 7, 1986, between DRIE and Magna that provided for government assistance to Magna of approximately $64 million for the establishment of two training centres combined with manufacturing plants in Cape Breton.

A high policy priority of the new Progressive Conservative government was to develop and encourage real economic growth using the private sector in regionally disparate areas such as Atlantic Canada and, in particular, Cape Breton, the most economically depressed area of the country. Mr. Stevens, as minister of DRIE, was responsible for the implementation of this policy. It was hoped that Magna's participation would act as a catalyst for broader economic development in a disadvantaged area.

For Magna, the Cape Breton project was an important commitment of money and resources into an area where the company had not operated previously and, as such, represented a significant risk to Magna's credibility. Mr. Stronach's testimony made it clear that he was the motivating force at Magna for the project, frequently against the wishes of his senior management, and that he viewed the project as an opportunity to demonstrate that the Magna philosophy was just as viable in Cape Breton as in southern Ontario, Magna's home base. Magna's interest in this project was not altruistic, and throughout the negotiations with DRIE Magna was guided by sound commercial judgment. At various times there was a concern on the part of DRIE officials that the amount of money sought by Magna for the project was too rich in relation to the quality of the proposed project. Further, Mr. Stronach's interest in the project was not blind to political considerations. During the early discussions with DRIE, Mr. Stronach mentioned on a number of occasions the possibility of establishing a training centre in Baie Comeau; he testified that this suggestion was made because this location was in the prime minister's riding. This suggestion was reported to Mr. Stevens, who gave no directions concerning it.

Although the negotiations with respect to the Magna Cape Breton project essentially took place between DRIE and Magna officials, there was more direct involvement by Mr. Stevens and Mr. Stronach in this project than in any other ongoing Magna project. Throughout this period Mr. Stevens directed the department concerning the project and always encouraged continued negotiation.

Magna's involvement in the Cape Breton project began in the fall of 1984. Magna had recently opened a training centre in the Toronto area and Mr. Stronach invited Mr. and Mrs. Stevens to visit the training school. During this visit on a Sunday in October 1984, Mr. Stevens raised the possibility of having similar facilities in areas such as Cape Breton. Mr. Stronach responded that he would consider the idea and suggested building four or five such facilities in remote areas. Mr. Stevens requested that officials pursue this idea. Initially Magna would absorb the graduates, but it was hoped they would return to their home towns at a later date to begin new businesses.

In November and December 1984 officials from DRIE and the CEIC met with Magna on a number of occasions with a view to developing a proposal for remote training centres. Magna envisaged that the government would pick up all of the additional costs of placing such training centres in remote areas, an amount which was anticipated to require a 75 percent government contribution or approximately

$5 million annually. The view in DRIE was that this amount was an extremely high level of government support.

Negotiations did not proceed rapidly. In late February 1985 DRIE officials requested instructions from Mr. Stevens as to how to proceed. These officials suggested that a manufacturing facility be attached to each training centre in order that graduates could have permanent local employment. Mr. Stevens directed officials to continue negotiations with a view to exploring the feasibility of attaching a manufacturing facility to the training centres, lowering the level of federal assistance requested, and placing a limit on the number of years federal assistance would be required.

On Sunday, March 24, 1985, Mr. Stevens invited Mr. Stronach to his farm to discuss means by which the government could fulfil its campaign promises to Cape Breton. As a result of this meeting a renewed commitment was forged. That week Mr. Stevens requested the department to undertake further discussions with Magna on a priority basis in order to finalize the Cape Breton project. On March 29, 1985, Mr. Stronach spoke to a forum sponsored by the Cape Breton Development Corporation and mentioned that Magna was considering establishing a plant in Cape Breton. Nothing came of the negotiations, however, since Magna officials did not think it was feasible in the short term to establish an adjacent manufacturing facility. By late April 1985 the department had determined that ministerial intervention was necessary to carry the negotiations further.

On May 3, 1985, Mr. Stevens and Mr. Stronach met at the CDIC offices in Toronto. No departmental officials were present, although in preparation for this meeting Mr. Stevens was briefed on issues regarding Cape Breton, the Class A Stamping project, and Polyrim. Both Mr. Stevens and Mr. Stronach had only sketchy recollections of the meeting, but they discussed the Cape Breton project, training centres, and Magna's need for total compensation for the added costs of doing business in Cape Breton. Although it does not appear that any specific issues regarding Cape Breton were resolved at this meeting, the project was kept alive.

A further stimulus was given to the project by the federal budget of May 23, 1985. Although the government announced the closing of the two heavy-water plants in Cape Breton with a consequent loss of 600 jobs, the budget also included a number of incentives to attract investment to Cape Breton. These incentives included a 50 percent investment tax credit in respect of the capital cost of property for a project located in Cape Breton. In this context, it became important politically to show some positive results in Cape Breton. Mr. Stevens instructed officials to begin preparation of a draft memorandum of understanding with Magna that could be announced during his upcoming visit to the area.

On June 14, 1985, Mr. Stevens made an announcement in Cape Breton of a MOU with Magna that was eventually signed on July 5, 1985. The MOU was a very general document without any commitments to expenditure of specific dollar amounts. It did contemplate that Magna would examine the feasibility of constructing both manufacturing and training facilities and that the Government of Canada would consider compensating Magna for the additional costs of doing business in Cape Breton. On July 17, 1985, Mr. Stevens announced a "Topping Up" program which provided that IRD program contributions for projects in Cape Breton could be doubled. At the same time, Finance Minister Michael Wilson approved an increase from 50 percent to 60 percent in the amount of investment available for the Cape Breton Investment Tax Credit.

In September 1985 Magna, pursuant to the MOU, put forward a proposal that was discussed at a meeting of DRIE and Magna officials, including Mr. Stronach and Mr. Stevens. The proposal contemplated that the government would pick up all of the extra costs of two manufacturing facilities, including transportation costs, loans for 100 percent of the cost of land and buildings, and 75 percent of the cost of equipment for the training centres. Once again departmental officials raised the question of the high level of assistance, and the participants examined ways in which the costs could be lowered. Mr. Stevens, in particular, asked whether tax incentives or credits would be useful. At the conclusion of the meeting both Mr. Stevens and Mr. Stronach agreed to redraft the agreement with the view to having its terms settled by the first week in October.

Following continued negotiations with officials, Magna put forward a revised proposal in October for up to three manufacturing plants with attached training centres to be built over a period of three years in Cape Breton. Two of these facilities were to be established immediately. Included in this proposal were capital and transportation costs for which Magna wished to be paid in advance.

The department's response to this proposal was that, although the amount of assistance on capital items could be calculated to offset operating costs, no subsidy should be provided directly for transportation costs. The department was also of the view that one training centre was sufficient for the first two plants. As a result, the department put forward an informal counter-proposal, which included assistance of $45.7 million for three plants and two training facilities, at a meeting with Magna officials, including Mr. Stronach, on October 30, 1985. On December 11, 1985, the EDB formally issued this counter-proposal to Magna.

Magna responded to the government's counter-proposal by letter dated January 13, 1986, and requested up-front assistance of $35.4 million per plant. A meeting was held in Toronto between DRIE and Magna officials, including Mr. Stronach, on January 17, 1986, and a compromise tentative agreement was reached for two training centres and two manufacturing centres. In substance, this agreement provided that all of Magna's cost estimates, including most transportation costs, over a ten-year period would be reduced to an equivalent net present value, which was approximately $30 million per plant, and that these funds for the two plants would be disbursed in the first year of the project. The funds would be non-repayable if Magna performed in accordance with its obligations.

The tentative agreement that had been reached with Magna was discussed by Mr. Stevens and Mr. Stronach at a luncheon in Ottawa on January 22, 1986. Subsequently, on February 7, 1986, the DRIE Internal Board considered the agreement and expressed certain reservations about it, including the need for the department to negotiate a more favourable arrangement for the government whereby some form of repayment would take place. On February 12, 1986, an interdepartmental meeting canvassed the views of the various interested departments on the Magna Cape Breton project.

On February 13, 1986, the tentative agreement was discussed thoroughly by Mr. Stevens with officials in the department. The officials pointed out the problems with the proposed agreement, underlining the difficulties with paying out the money in advance. The cash flow to Magna in the first two years would have been greater than their anticipated expenditures. At the meeting there was a general consensus that the agreement as it stood would not be acceptable to the government, both because of the amount of assistance requested and the proportion of money to be paid in advance. The meeting went late into the evening without Mr. Stevens making a decision. Mr. Stevens subsequently directed Mr. Brown to restructure the project in such a way that there would be less up-front money, more use of tax credits, and a higher quality project given the fixed capital investment.

The department officials continued their negotiations with Magna based on Mr. Stevens' directions. By mid-March Magna had developed a proposal with two important new features, namely:

- a shift to a more capital intensive plant to enable better use of existing programs and the investment tax credit; and
- a product which was less sensitive to freight costs, lowering the cost differential for transportation and operating costs from $37.2 million to $4.5 million.

These changes raised the requested assistance to $31 million per plant, but the quality of the project was greatly improved and could be accommodated more easily within the existing IRD program. Mr. Stevens, in discussions with officials, determined that a counter-proposal be made for two manufacturing facilities and one training centre with a net present value of $27.6 million for plant 1 and $18.7 million for plant 2. This assistance would fall within existing programs such as the IRD program, Topping Up, the Atlantic Enterprise Program, investment tax credits, and CEIC and DRIE training assistance. It was also proposed that Magna grant to the government a stock option for $1 on 25 percent of the new treasury stock for the proposed Cape Breton subsidiary of Magna. The department prepared a letter dated March 26, 1986, to Mr. Stronach from Mr. Stevens incorporating the government's new position, including an offer, in net present-value dollars, of $28.3 million for plant 1 and $18.7 million for plant 2.

After this offer was made to Magna, Mr. James (Jim) Howe of DRIE had extensive discussions with Magna officials. He reported to Mr. Brown that the discussions were not progressing well. Magna still pressed for up-front cost payments. Mr. Brown telephoned Mr. Stevens, who was in Phoenix, Arizona, and explained that, as the negotiations were in serious difficulty, Mr. Stevens should speak to Mr. Stronach. Mr. Stevens then called Mr. Stronach and arranged for a meeting in Ottawa on April 7, 1986.

Mr. Stevens, Mr. Stronach, and their respective officials met in Ottawa as arranged for a final negotiating session. Magna had indicated that it was only prepared to proceed with one plant and one training centre, but the department felt that, politically, two plants were necessary. The amount of assistance, including payments in advance, the use of the investment tax credits, and the location of the second site were discussed.

At this meeting, a memorandum of agreement was drafted and then signed by Mr. Stevens and Mr. Stronach. The agreement provided for government assistance of $27.55 million in present-value dollars for each of two plants. Magna agreed to invest a minimum of $4 million in equity capital per plant. The government assistance consisted of a start-up cost payment of $1 million in advance for the first plant and a maximum of $3 million for the second plant. There was also an interest-rate subsidy under the Atlantic Enterprise Program. The IRD program contribution per plant was $9.79 million, which was then doubled under the Topping-Up program. CEIC and DRIE were to provide funds for training costs. The benefit of the investment tax credits was to be shared between Magna and the government. Under this agreement the total value of government assistance to Magna was at least $64 million. On April 8, 1986, the cabinet approved the project. Three days later, Mr. Stevens and Mr. Stronach both made announcements concerning the agreement that had been reached.

DRIE Documents in the Possession of Magna

The following confidential documents relating to the Magna Cape Breton project were found in the files of Mr. Richard Donaldson, director of government relations for Magna and a former DRIE employee who had acted as a project officer on Magna applications for assistance:

- memorandum addressed to Mr. Stevens, dated May 31, 1985, with a draft memorandum of understanding attached;
- memorandum addressed to Mr. Stevens, dated March 21, 1986, outlining DRIE's negotiating strategy and fall-back position; and

- a draft letter from Mr. Stevens to Mr. Stronach, dated March 26, 1986.

Messrs. Bob Brown, James Dancey, John Lane, and James Howe of DRIE testified that these documents should not have been in Magna's possession and they could offer no explanation as to how this occurred. Mr. Donaldson testified that the May 31, 1985, document was given to him by Mr. Dancey during the negotiations leading up to the signing of the MOU in June 1985. Mr. Donaldson's handwritten notes appear on the draft memorandum attached to this document. Mr. Donaldson testified that he had no recollection and could offer no explanation as to how the other two documents came to be in his files. The document outlining DRIE's negotiating strategy includes the government's fall-back position, which reflects substantially the ultimate values reached in the agreement. Mr. Stevens testified that he did not give these latter two documents to anyone.

Possession by Magna of confidential government documents relating to the government's bottom line prior to the April 7, 1986, meeting would be a serious matter. Possession of such material after the deal had been made on April 7, 1986, would be of no practical importance. It is impossible to say, on the evidence, whether the DRIE documents came into Magna's possession before or after the April 7, 1986, meeting. In any event, the markings on the Magna copy are quite different from those on the document obtained by the Commission from the minister's office. Moreover, the Magna copy, unlike the minister's copy, is not signed by or on behalf of Mr. Brown. These differences suggest that the leak, wherever and whenever it took place, did not come from the minister's office.

It cannot be alleged that any impropriety involves Mr. Stevens. Counsel for the Canadian government, in his written argument, has stated that "DRIE has taken internal action at the officials level to ensure that any impropriety in this respect is not repeated" (p. 136).

Transaction with Anton Czapka

The allegations concerning the transaction with Mr. Czapka were central to the Inquiry. They related to the relationship between Mr. Stevens' department and Magna. They necessarily included, as well, inquiry into the development of government policy towards less prosperous regions of Canada such as Cape Breton, a policy that involved Magna. The allegations also implicated Mr. Stevens' private economic interests. The $2.62 million loan that was negotiated by Mrs. Stevens in April 1985 provided significant and timely financial relief to the York Centre group of companies, which, in a collective sense, were then in a condition of financial peril. Its importance in this Inquiry cannot be overstated.

Before examining the relationships among the individuals involved in these events and the events themselves, it is helpful first to set out briefly the central facts about the transaction with Mr. Czapka. On April 4, 1985, Mrs. Stevens visited Mr. Stronach at the head office of Magna and he introduced her to Mr. Czapka. By the end of April Mrs. Stevens and Mr. Czapka had reached an agreement whereby Mr. Czapka agreed to lend $2.62 million to Cardiff on the security of a participating mortgage. On May 16, 1985, Mr. Czapka advanced this amount through a numbered company that he had incorporated. Mr. Czapka obtained the funds from the Bank of Nova Scotia, using a comfort letter provided by Magna. These are the events that gave rise to the allegations. The facts surrounding these events are extensive and are developed in more detail in the remainder of this chapter.

Mr. Czapka

At the time relevant to this Inquiry, Mr. Czapka was a long-time business associate and personal friend of Mr. Frank Stronach, chairman of Magna. They had known each other in Austria before emigrating to Canada in the early 1950s. Mr. Czapka worked part-time with Mr. Stronach from 1957 until 1960, and full-time thereafter until 1981. Mr. Czapka's association with Magna and its predecessor entities thus spanned nearly 30 years. He helped develop the business from a single tool and die operation with a handful of employees into the giant it is today. He selected and trained European tool and die makers, grooming them to function as managers of factories in the Magna family. He was fully conversant with the technical side of the business. As time passed, he developed an increasing interest in real estate and its development, and utilized this knowledge in expanding Magna's network of plants.

It is central to the allegations relating to the Czapka loan that Mr. Czapka was a person closely associated with Magna. It is as a result of Mr. Czapka's association with Magna that questions of conflict of interest were raised about the transaction. There can be no doubt that there was a relationship between Mr. Czapka and Magna at the relevant time; indeed, this fact was conceded by counsel for Magna.

The only real issue is the extent or degree of Mr. Czapka's association with Magna. Counsel for both Magna and Mr. Czapka stressed that, at the relevant time, Mr. Czapka had severed most of his ties with the company. It was said that he was in the last stages of gradual retirement. This process had seen him give up day-to-day activity in 1981, when he resigned as a director and officer of Magna. It was also pointed out that Mr. Czapka had ceased to be a major shareholder in early 1985 and was seeking to sell his equity interest in Magna plants.

Mr. Czapka's degree of involvement with Magna's affairs must be determined on objective criteria in an Inquiry of this kind. The question is not so much one of his plans as his actual or apparent involvement. Certain conclusions are clear. In the first place, Mr. Czapka was ensconced in the executive suite of Magna at its head office. His private office was adjacent to that of the chairman and he was in direct communication with the senior officers of the company.

Secondly, and of greater significance, he continued to discharge many of the responsibilities that he had performed for years. He was active in human resources, real estate, and plant development, and in relations with government. In addition, he was involved in a new joint venture with Magna which would be run by his son — the Multimatic project. As consideration for these services, Mr. Czapka received substantial compensation, expressed as a percentage of corporate profit, under the terms of a consulting agreement. Had he remained an officer, his remuneration would have placed him at the highest levels of management.

Based upon her dealings with him, Mrs. Stevens concluded that Mr. Czapka had an important association with Magna. Indeed, at the time of negotiation of the loan, Magna's banker, who was clearly unacquainted with the details of Mr. Czapka's retirement process but had dealt with both Magna and Mr. Czapka for 20 years, continued to regard them as synonymous.

I have no hesitation in concluding that at the time of the negotiation and execution of the Czapka loan, Mr. Czapka, in appearance and in fact, was closely associated with Magna. He continued to function as a participant in its business endeavours and as part of its team. In this instance, the appearance of things to persons dealing with Magna was consistent with the facts.

Mr. Czapka's Knowledge of the Relationship among DRIE, Magna, and Mr. Stevens

In determining the facts surrounding the transaction, it is important to assess the extent to which Mr. Czapka was aware of Magna's historical relationship with DRIE and Mr. Stevens' role as minister responsible for DRIE. To the extent that the relationship represented a benefit to Magna, it would presumably be worth preserving and, indeed, fostering. It is thus necessary to understand what Mr. Czapka knew about the subject.

Mr. Czapka was involved with four applications for assistance from DRIE. The first related to financial assistance for Master Precision Tool & Die, a company whose assets Mr. Czapka had purchased in 1983 with a view to establishing his son Peter in the business. He pursued this application with some success until June or July 1984, when Magna took over the company and made a second application for assistance. DRIE officials consulted Mr. Czapka about this second application in the fall of 1984. Through Master Precision, therefore, he was aware of the existence of DRIE as a source of funding, how the process worked, and the involvement of Magna in seeking similar funding.

The third application was made by Magna in June 1984, on behalf of Multimatic. Anton and Peter Czapka were shown on the application form as the requisite contact persons. This application was approved on April 17, 1985, and shortly thereafter Mr. Czapka was made aware of the approval by his son. Subsequently, the project was taken over by a new company, Multimatic Inc. Magna held 50 percent of the shares of this company, and Lostrock Corp., Mr. Czapka's estate-freeze vehicle, the other 50 percent. Under a voting agreement, the Lostrock shares were voted by Peter Czapka. Peter and Anton Czapka were elected directors and appointed officers of Multimatic Inc., with Magna retaining ultimate control of the affairs of the company through a shareholders' agreement.

The fourth application was one made by Magna to support its Class A Stamping project. Two DRIE officials, Mr. Robert Allison and Mr. Gerald Jean, testified that Mr. Czapka was aware of both the project and the application for funding and that in 1985 he attended two meetings between Magna and DRIE officials to discuss it. The arrangements for the meetings were facilitated by Mr. Czapka, and, at the meetings, he contributed to the discussion.

DRIE officials, in Toronto and Ottawa, were well aware of Mr. Czapka's historical role at Magna as a result of their course of dealings with him and the company. Indeed, Mr. Allison had a clear understanding of Mr. Czapka's role at Magna specifically and in the tool and die industry generally.

Insofar as his relationship with Mr. Stevens is concerned, Mr. Czapka met him only once, in June 1984, very briefly, at the opening of Magna's recreational park. He was aware in September 1984 that Mr. Stevens had been appointed minister of DRIE.

At the time of negotiation of the transaction in April 1985, therefore, Mr. Czapka was aware of the industrial funding responsibilities of DRIE and how the system worked. He was further aware that Magna had applied and continued to apply for funds from DRIE by way of grants or loans and that Sinclair Stevens was the minister responsible for this funding agency of government. Indeed, he was involved in a direct funding for Multimatic that was both personal in terms of his relationship with his son and institutional in light of the relationship of Multimatic and Magna.

Relationship among Mr. Stronach, Mr. Stevens, and Mrs. Stevens

Frank Stronach and Noreen Stevens first met in the mid-1970s. They were both on the board of directors of the Big Brothers organization for York Region. They became good friends and each developed a high regard for the other. According to Mr. Stevens, he met Mr. Stronach in Switzerland at a conference. Over time, Mr. Stevens became an ardent admirer of Mr. Stronach and his business philosophy. As a result of this respect and of Mr. Stronach's pre-eminence in the business community, in the fall of 1984 Mr. Stevens sought Mr. Stronach's assistance with the federal government's privatization program, ultimately recommending him for appointment to the board of CDIC. Mr. Stevens also engaged Mr. Stronach in discussions on the subject of regional development. He toured Magna's industrial training school and entered into a prolonged dialogue about how such facilities might be implemented elsewhere. These discussions ultimately led to investment by Magna in Cape Breton, in part funded by DRIE.

Mr. and Mrs. Stevens and Mr. Stronach are neighbours in the Newmarket area north of Toronto, and Mr. Stronach was an occasional visitor to the Stevens home prior to the spring of 1985. Their discussions, which related to business and politics, were more general than specific and were apparently fuelled by Mr. Stronach's corporate philosophy and his need to articulate its advantages to interested listeners. For her part, as must have been inevitable, Mrs. Stevens was aware of the general nature of Mr. Stronach's business. She was also aware of the fact that her husband and Mr. Stronach were involved, from time to time, in matters of mutual interest relating to government business.

It can be concluded, therefore, that at the time of the Czapka loan, Mrs. Stevens knew Mr. Stronach personally and was aware of her husband's governmental relationship with him.

York Centre Approaches to Magna

In the months before Mr. Czapka became involved in the loan transaction, York Centre management had twice approached Magna in an attempt to interest it in business ventures.

In the early fall of 1984 Mr. Stronach attended a meeting at the Sisman's plant in Aurora at the invitation of Mr. Ted Rowe. Mrs. Stevens was at this meeting as Sisman's solicitor. Sisman's was facing imminent receivership and Mr. Stronach was asked to consider whether there was any way to save the company, either through the operation of another business out of the Sisman's plant or by the purchase of its building. Mr. Stronach declined to become involved, apparently out of concern, as he said, that Mr. Stevens "might play a role in government" (Transcript, vol. 41, p. 7160). At or about the time of these events, Mr. Stevens was made aware of the fact that Mr. Stronach was showing some interest in helping with the Sisman's situation. As it turned out, neither Mr. Stronach nor Magna became involved with the business or the plant.

In late February 1985 MI Realty, a division of Magna International and its real estate arm, was approached by Mr. Rowe, Mr. Doug Hopkins, and Mrs. Stevens in an attempt to interest Magna in a limited partnership proposal that would have afforded the Cardiff group substantial returns. Mrs. Stevens took an active part in discussion of the commercial aspects of the proposal, apart altogether from her role as solicitor. Early in March, and after two meetings, the plan was rejected by MI Realty as too costly. During the course of the first meeting, which was attended by Mr. D. Robin Sloan, then the senior executive of MI Realty and a senior vice-president and director of Magna, and others, the MI Realty personnel were made aware of the fact that

Noreen Stevens was Sinclair Stevens' wife, and that he was a government minister.

Meeting of March 24, 1985

In late March 1985 York Centre was facing the financial difficulties described earlier. A number of ideas for financing had been discussed in the March 16 meeting with Mel Leiderman. Mr. Stevens had led the discussion at this meeting, in which the current fiscal needs of the York Centre group were on the table.

About a week later, on March 24, Mr. Stevens met with Mr. Stronach at the Stevens farm. The meeting was arranged at Mr. Stevens' request. The discussion related to government affairs, specifically, the Magna Cape Breton project. Mrs. Stevens was present at the farm and had a brief conversation with Mr. Stronach while he was in the house. She testified that as Mr. Stronach was leaving, and while accompanying him to his car, she brought up the question of whether he knew anyone who could advise her on real estate that clients of hers wished to sell, refinance, or develop. Mr. Stronach suggested that she give him a call. Shortly thereafter, she telephoned to arrange the meeting that ultimately took place on April 4, 1985, at Magna's offices.

Introduction to Mr. Czapka

On April 4, a Thursday, Mrs. Stevens visited Mr. Stronach at the head office of Magna. She had a brief discussion with him, and, minutes later, Mr. Stronach introduced her to Mr. Czapka. What Mrs. Stevens discussed with Mr. Stronach and how he introduced her to Mr. Czapka were the subject of some dispute in the testimony and argument. These issues are not without importance because they bear on the nature of the relationships that subsequently developed.

Although Mr. Stronach had told journalists in April and May 1986, when these matters were first aired publicly, that he and Mrs. Stevens had discussed matters openly on April 4, 1985, that she had come to him as a friend because of cash flow problems, that she had said: "We have a cash flow problem, we don't want to make a fire sale" (Exhibit 131, p. 2), and that she needed help or advice "on her personal real estate" (Exhibit 132, p. 1), he testified in this Inquiry that the details of the relationship between the problems and Mrs. Stevens personally, and the nature of the need, had not in fact been mentioned. His explanation was that he had learned of these details only in 1986 after the story broke, and as a result of conversations he then had with Mrs. Stevens. Mrs. Stevens reviewed Mr. Stronach's testimony, before giving her own. She confirmed his recollection of the facts.

I reject the testimony of both Mr. Stronach and Mrs. Stevens as to the nature of their conversation on April 4. The relationship of friendship and trust that existed between them in 1985 could only have resulted, particularly in view of Mrs. Stevens' anxiety about York Centre affairs, in her speaking openly and candidly with him. Neither offered any explanation of why they would not have. Furthermore, it is inconceivable that Mr. Stronach would mistakenly embellish his recollection, when responding publicly to the media about serious allegations, in a manner that would inevitably have the effect of involving him more deeply. His denial of the media's account of events also does not explain his statement to Michael Harris, a *Globe and Mail* reporter, before the story broke, that he could not help Mrs. Stevens because of an obligation to his shareholders — an instinct that could only flow from knowledge that her needs were personal.

Accordingly, I conclude that Mrs. Stevens spoke to Mr. Stronach openly and made her needs known. These needs effectively were for funding for the troubled York Centre group. Whether or not the companies were mentioned by name is immaterial. Certainly he was made aware of their connection with the Stevens family, as opposed to being the needs of some anonymous client. Because of his friendship with Mrs. Stevens and his gregarious nature, he wished to help. As he later advised the press, he could not do so directly. So he took her to see Anton Czapka.

The manner in which Mr. Stronach introduced Mrs. Stevens to Mr. Czapka was also a matter of some controversy. Mr. Stronach and Mrs. Stevens insisted that he had not referred to her by name but had said to Mr. Czapka words to the effect "meet a friend." He then left the two to discover each other's names. Mr. Czapka's recollection, however, was that Mr. Stronach had used Mrs. Stevens' surname when making the introduction. Mr. Stronach suggested that his manner of introduction was deliberate. On the one hand he wished to ensure that Mrs. Stevens would receive serious attention from Mr. Czapka, and, on the other, he did not wish Mr. Czapka to feel any pressure to help her because of her relationship to the minister.

The evidence of Mr. Stronach and Mrs. Stevens supports an unnaturally abbreviated form of introduction. Their version is contradicted by Mr. Czapka, and I accept his account of the facts to the effect that Mr. Stronach's friend was introduced as "Mrs. Stevens." I reject Mr. Stronach's claim that he wished to eliminate any pressure by association with the minister. Inevitably, within moments of the introduction, Mr. Czapka would come to know his visitor's name. Indeed, I conclude that Mr. Stronach's purpose was to ensure that help would be forthcoming from Mr. Czapka, since appearances would not permit it to come from him.

Mr. Czapka's Knowledge about Mrs. Stevens

Mr. Czapka denied knowing both that Mrs. Stevens was Mr. Stevens' wife and that she had any personal interest in the real estate or the borrowing companies until after the transaction was complete. I intend to examine this issue. In the days and weeks following their introduction, Mrs. Stevens and Mr. Czapka negotiated the $2.62 million loan, an arrangement that was, in part, committed to writing on April 29, 1985. Mr. Czapka then retained Mrs. Stevens as his lawyer to act on his behalf in what was a very substantial transaction. The sum of $2.62 million, which was advanced on May 16, 1985, was not only a large sum but it represented 100 percent of the borrowers' equity in six properties. Although the details of the transaction are outlined hereunder, the parameters of the relationship among lender, borrowers, and solicitor bear on the question at issue in this section and require analysis.

During negotiations, Mr. Czapka learned that the intended borrowers had serious cash flow problems which inhibited their capacity to manage any further conventional debt. He conceded that he knew nothing about the corporate borrowers. He did not check their creditworthiness or investigate them in any way. In the negotiations, he had little documentation concerning the real estate intended to form the security for the loan — basically only an appraisal report — to which, he testified, he paid little attention. He visually inspected the six properties in one day, without entering any of the commercial buildings on the sites.

The full amount of the loan was advanced without his seeing any meaningful documentation, in spite of the fact that the transaction involved a form of partnership with an anticipated long-term relationship of a fiduciary nature. Although there was no impediment to his using his own lawyer, he engaged Mrs. Stevens to act in spite of the fact that, by his account, he did not know who she was. His behaviour throughout, in spite of his reputation as a shrewd real estate investor, was characterized by a curious willingness to accommodate Mrs. Stevens' desire to proceed with haste. This course of conduct was accompanied by some evidence of a desire to keep the matter confidential or secret, as witness Mr. Czapka's uncharacteristic refusal to provide the Bank of Nova Scotia, the funding institution, with the details of the locations of the properties.

In sum, Mr. Czapka testified that the entire negotiations were conducted without his knowing anything about Mrs. Stevens, her interest in the properties, her husband's interest in them, the background of the companies and their business, the principals, or any other aspect of the borrowers. All he knew was that Mrs. Stevens was their lawyer, that she had 30 years' experience, and that she was a friend of Frank Stronach.

It is simply inconceivable that any transaction of this kind, settled on the terms and in the manner which occurred here, would take place without the lender knowing at the very least who he was negotiating with, who the principals of the borrowers were, what their relationships, businesses, and assets were, and generally something of the background of the individuals with whom he was dealing. I do not accept that Mr. Czapka's knowledge was as minimal as he described it. If Mr. Stronach did not inform him that Mr. Stevens had an interest in the properties and who, in fact, Mrs. Stevens was, I conclude that Mr. Czapka learned this from Mrs. Stevens herself. I find that Mr. Czapka embarked upon negotiations knowing of Mr. and Mrs. Stevens' relationship to each other and to the properties intended to form the security for the loan. I conclude that, in fact, it was this very knowledge, and the comfort derived therefrom, that resulted in Mr. Czapka's agreeing to the loan on these terms.

The Transaction

Negotiation

The preceding section has dealt in a general way with some of the events and circumstances leading up to the making of the loan. Conclusions about the precise nature of the transaction require a detailed analysis of the steps in the negotiation process, which occupied the month of April 1985.

In their initial meeting on April 4, 1985, Mr. Czapka and Mrs. Stevens discussed certain of the properties in question. Mr. Czapka had the impression that Mrs. Stevens was interested in selling or refinancing them. Nothing was settled except that Mrs. Stevens agreed to provide Mr. Czapka with appraisals of the properties for his consideration. Mrs. Stevens picked up the appraisals that day.

Fairly soon afterward, Mrs. Stevens met with Mr. Czapka again at Magna's head office and brought with her appraisals covering eight properties then owned by the York Centre group. She advised Mr. Czapka to ignore the appraisals because, in her opinion, they were too low. She said that she was not prepared to discuss a deal if Mr. Czapka intended to rely on them. Mr. Czapka agreed to do his own valuation.

The appraisals Mrs. Stevens provided had been prepared by Garth S. Webb & Associates Ltd. in November 1984. In 1982 and 1983 this same firm had prepared appraisals on the same properties. Four of the properties were developed with industrial buildings and were located in Oakville, Toronto, and Barrie (486–492 Wyecroft Road, Oakville; 1260 Martin Grove Road, Etobicoke; 120 Bethridge Road, Etobicoke; 274–276 Bayview Drive, Barrie). Two were vacant industrial land in Toronto and Barrie (Leading Road, Etobicoke; Bayview Drive, Barrie). The remaining two were the Clady Farm property in King Township and an industrial building in Edmonton (W. 1/2 Lot 28, Pt. W 1/2 Lt. 29, Conc. II, Township of King; 12840 St. Albert Trail, Edmonton). In addition to information about the properties' location, dimensions, improvements, zoning, and estimates of value, the appraisals contained relevant information about existing mortgages and leases on the properties. The total annual mortgage payments were shown as $90,257, with total annual revenue in the form of rent at $206,233.

At some point, possibly at this second meeting, Mrs. Stevens told Mr. Czapka that her clients did not really wish to sell the properties.

Whether from information provided by Mrs. Stevens or as an inference from her desire to structure a transaction to provide relief from payment, Mr. Czapka came to the conclusion that there were serious cash flow problems.

At the conclusion of this second meeting, it was left that Mr. Czapka would do his evaluations and develop a price for the purchase of the properties. At an early date Mr. Czapka concluded he had no interest in the Clady Farm and Edmonton properties. He then visually inspected the remaining six to estimate their value. As indicated earlier he did this in one day, without entering any of the buildings. He described the process as follows. Having viewed each property, he recorded his opinion as to value and totalled all the valuations. The valuation figures were quite precise; for example, the Leading Road property was given a value of $481,000. His total was $3.106 million.

Mr. Czapka thereafter returned to Mrs. Stevens with his price for the properties. (Mrs. Stevens recalled this occurring over a number of phone conversations, Mr. Czapka in one meeting.) He offered her less than $3.106 million. He had no recollection of the specific figure, although he did say it was considerably less. Mrs. Stevens in turn had an asking price, which, he remembered, was significantly greater than his valuation. Mrs. Stevens thought that her initial price was $3.8 million and that his was under $2 million.

It became clear that no agreement was going to be reached on the basis of a sale. Mr. Czapka agreed to consider alternative arrangements, and proposed the idea of a mortgage. Mrs. Stevens testified that at some point in the discussions she mentioned to Mr. Czapka that a straight mortgage would not be of much assistance. Obviously this was so because the discussion was premised on cash flow problems. Mr. Czapka testified that Mrs. Stevens asked him if he might become involved as a partner or in another way. Mr. Czapka agreed to think about it.

At some point during the negotiations, Mr. Czapka tested his total valuation figure ($3.106 million) by analyzing the income potential of five of the six properties (the vacant land in Barrie being excluded) using various arbitrary rent levels, including static rents, over a five-year period. This calculation incorporated features of the transaction ultimately settled upon, such as the advance of $2.62 million, the interest-free first year, 50/50 sharing of sale profits over the valuation figure, the borrowing to fund the loan, and the five-year 12 percent mortgage. The only element missing was the disposition of the proceeds of sales of the properties up to the valuation figure.

Mr. Czapka's calculation assumed that the borrower would be able to pay off prior mortgages amounting to about $300,000 in the first year, and pay annual interest of approximately $300,000 from 1987 through 1990. From the Webb appraisals, he knew that the net rental income would be only about $116,000 so long as the current leases and mortgages remained in place. The calculation contemplated that the mortgages would be largely paid down after the first year.

Based on this analysis, Mr. Czapka responded to Mrs. Stevens' request for something other than a sale by proposing that there be a loan with a participating mortgage (based on his $3.106 million evaluation), whereby he would participate in profits on any sales of the properties on a 50/50 basis over this figure. This so-called participation mortgage (a form of financing which, it is worthy of note, Mr. Stevens had suggested in September 1984) ultimately became the land development agreement. Mrs. Stevens was receptive to this idea, according to Mr. Czapka. Remaining terms such as the amount to be advanced, the interest-free first year, and the interest rate were determined in negotiations following this acceptance of the basic idea.

The lending company, 622109 Ontario Inc., was incorporated on April 24, 1985, by Mr. Czapka's regular solicitor. Mr. Czapka testified that he had given instructions to have the company incorporated "probably a few days previously" (Transcript, vol. 25, p. 4208), although, he stated, this was speculation on his part; 622109 Ontario Inc. was incorporated because Mr. Czapka thought he might need it for the loan to Mrs. Stevens' company. At April 24, he testified, he and Mrs. Stevens would have been close to, or would have reached, a verbal agreement. Mr. Czapka's diaries suggest that there were meetings or other communications with Mrs. Stevens on April 23, 24, and 26. He also testified that it was possible that by April 26, or even earlier, the transaction had been agreed to in its essential terms.

The April 29 Letter Agreement

Mrs. Stevens and Mr. Czapka met on April 29, 1985, at which time a two-page letter agreement that Mrs. Stevens had proposed was signed. The terms of the letter are as follows:

> LOAN AMOUNT ON REAL ESTATE — $2,620,000.00
>
> INTEREST: 12% Per Annum commencing after the first anniversary date of the Mortgages payable yearly.
>
> TERM: Five (5) years when entire principal becomes due (subject to partial payments from time to time on sale of real estate).
>
> PRIVILEGES: Fully open with partial discharges of individual properties sold upon payment of net proceeds of sale to Mortgagee; all sales to be subject to reasonable approval of Mortgagee.
>
> SECURITY: First and Second Mortgages specifically charging the lands listed on the attached inventory of real estate with assignments of leases (subject to existing First Mortgages as indicated thereon).
>
> LAND DEVELOPMENT AGREEMENT: Prior to advance of funds Cardiff Investments Limited to enter into a Land Development Agreement on terms satisfactory to you which will incorporate a Profit Sharing Arrangement providing you with 50% of the net

> profit on all sales over the evaluation noted on the Schedule attached.
>
> ADVANCE: On or before May 15th, 1985, and no later than May 30th, 1985.
>
> (Exhibit 183, pp. 1–2)

Attached to the letter, according to Mrs. Stevens, was a schedule describing the properties and their value. There is a conflict in the evidence over whether the issue of the disposition of the proceeds of sales up to $3.106 million was raised on April 29 and a term added to the schedule to deal with this issue. I accept Mr. Czapka's evidence that the issue was not raised until after the funds were advanced. I note that Mr. Czapka was unsure whether any schedule was attached to the letter he signed and that he had very little recollection of any discussion occurring when the letter was presented to him by Mrs. Stevens.

Pre-Closing Matters

Mrs. Stevens prepared a preliminary reporting letter dated May 8, 1985, which set out, among other things, details of certain leases. This letter also noted that the tenant of one property (1260 Martin Grove Avenue) had an option to purchase the property for $498,000, which was some $152,000 less than Mr. Czapka's value. The existence of this option was not referred to in the Webb appraisals. Apparently this letter did not reach Mr. Czapka, nor did he see any documentation, until after the full proceeds of the loan were advanced.

The Closing

The proceeds in the amount of $2.62 million were advanced to Stevens & Stevens in trust on May 16, 1985. Mr. Czapka secured the funds by way of a loan to 624824 Ontario Inc. (a company he had incorporated that day), which he negotiated with the Bank of Nova Scotia in Richmond Hill. This loan bore a floating interest rate equal to the bank's prime rate from time to time. The rate was 10.5 percent when the funds were borrowed. A certified cheque in the amount of the proceeds was delivered personally by Mr. Czapka to Mrs. Stevens.

The loan brought immediate relief to York Centre. The Canadian Imperial Bank of Commerce was appeased. The Hanil Bank loan to Cardiff Construction was repaid. Hanil's Toronto office agreed to renew its loans to Gill and YCPL. Guaranty Trust was paid out. Mrs. Stevens wrote cheques to each of these institutions, the precise amounts of which were recorded in Shirley Walker's diary on May 16, 1985.

The principal feature of the relief was that $2.62 million had been raised without any requirement for repayment of either principal or interest until May 1987, two years hence.

Mr. Czapka's Subsequent Involvement

After the closing of the transaction, and as called for by the land development agreement, Mr. Czapka became involved in the administration of his investment. He was provided with financial information and details of lease renewals, mortgage maturities, and proposals for sale.

Mr. Czapka was disturbed when he discovered, only after the event, that he would not be able to control the price on any sale of the Martin Grove property. Mrs. Stevens was embarrassed on learning that her letter advising him of the tenant's option had not reached him. In view of the existence of the option that he expected might be exercised in 1986, he agreed to allow the existing mortgage to be extended beyond its maturity date in spite of his right to insist that it be paid off. Indeed, in March 1986 the Martin Grove tenant exercised the option. This event ultimately led to some disagreement between Mrs. Stevens and Mr. Czapka over the disposition of the proceeds of the sale.

With Mr. Czapka's approval, offers were solicited on the vacant land in Barrie in late January and early February 1986. On March 31, 1986, the land was sold for $236,000. (This figure and the property were noted by Mr. Leiderman at his meeting with Mr. and Mrs. Stevens on April 13, 1986.) This price was more than $90,000 below his valuation of a year earlier. Mr. Czapka received the proceeds of sale net of legal fees and realtor's commissions. There was no prior mortgage on this property. In May 1986 an offer was made on the Leading Road property below Mr. Czapka's evaluation and he rejected it.

On May 5, 1986, the Bank of Nova Scotia loan that Mr. Czapka had taken to fund the transaction was repaid in full. In the 12 months following the transaction with Mrs. Stevens, Mr. Czapka had paid about $277,000 in interest to the Bank of Nova Scotia. Apart from the proceeds from the sale of the Barrie land, no payment had been made on the Czapka loan, however, because none was yet called for.

By the month of June 1986 the Inquiry had been established with considerable attendant publicity. Thereafter, the relationship between Mr. Czapka and Mrs. Stevens in their management of the land development agreement became somewhat more adversarial and frosty. Mr. Czapka's friendly and conciliatory approach waned. In June, Mr. Czapka refused requests for the extension of the terms of two of the existing mortgages. At the same time, he insisted that he be paid for the complete proceeds on the Martin Grove sale with no deduction for lawyer's fees, in view of the fact that he had not been forewarned about the option. His new lawyer, who was also his counsel in the Inquiry, objected to Mr. Czapka's providing partial discharges of the remaining Cardiff mortgages once the proceeds were paid to him.

Nature and Effect of the Transaction

A principal component in the allegations regarding the Czapka loan was the suggestion that it was a "sweetheart" loan. I understand a "sweetheart" deal to be one that implies some kind of collusive agreement between two parties with terms that are disadvantageous to a third party not privy to the agreement. Two things, then, are important to such an arrangement: first, some degree of collusion between the two parties to the agreement must exist; and second, there must be a disadvantage or detriment to a third party. I have concluded that the participating mortgage agreement that was entered into by Noreen Stevens and Anton Czapka was not a "sweetheart" deal. There was no evidence of collusion, nor was there any evidence that the terms of the agreement were in some way disadvantageous or detrimental to a third party. This is not to say, however, that the transaction was necessarily a normal commercial agreement with all the signs of an arm's length transaction.

Certainly the facts and circumstances are highly suspect. The amount involved, the manner in which the deal was negotiated, the relationship of the parties, and the ultimate terms of the transaction raise immediate questions about whether ordinary lenders of reasonable sophistication, motivated as one might expect by instincts of self-interest and financial reward, would have settled upon this transaction.

There are several features of the transaction which suggest that Mr. Czapka was in a generous frame of mind in dealing with the borrowers. For example, he incurred substantial financing costs himself while offering the borrowers interest relief for the first year, deferral of the first payment to the end of the second year, and annual payments thereafter. He assumed the risk that his maximum return would be 2 percent on the funds advanced. He permitted open mortgages and valued the properties collectively at a substantially higher figure than that dictated by an arm's length appraisal written several months earlier. The sum advanced represented the entire amount of the borrowers' apparent equity, and he sought no personal guarantees in spite of an absence of any information on creditworthiness. He overvalued at least one property. Further, although he testified that he would not have bought the properties for the sum at which he valued them, arguably he effectively did precisely that, by advancing a sum equivalent to the borrowers' equity based on the figure in question. He took this risk relying principally on the properties themselves and knowing that, should the borrowers prove unable to make the first interest payment, he might have to service or pay down prior mortgages which at the time of the advance equalled the difference between the amount of the loan and his valuation figure.

Mr. Czapka and his counsel pointed to several factors that were said to offset this risk. They urged that the transaction be looked at as a whole, in light of subjective considerations which Mr. Czapka testified represented his motivation, with due weight being given to Mr. Czapka's ability, experience, and acumen in real estate speculation and the reasonableness of his expectations in this transaction.

Thus it was noted that Mr. Czapka was and is a very wealthy man, enjoying a net worth of more than $15 million and quite able to arrange credit for the loan proceeds and, no doubt, for sums considerably beyond them. Mr. Czapka said too that the transaction was not merely a mortgage loan; rather, it gave him effective control of the properties in that he could trigger all dispositions by way of sale, with the full proceeds, up to $3.106 million, being paid to him. Profits on sales beyond this figure were to be shared equally.

Mr. Czapka also testified that he was indifferent to the risks associated with lending to the full extent of the borrowers' equity and deferring the payment of interest for such an extended period. He would not have been interested in an outright acquisition, he said, except at a very low price.

It was further argued that when Mr. Czapka embarked upon the transaction, he was quite able to meet the borrowers' immediate need for cash relief and was willing to defer collecting his return until a later time, through the land development agreement. So, in Mr. Czapka's mind, the provisions of the agreement were said to offset whatever initial costs he might incur as well as the low or nil return on the mortgages themselves. The Inquiry also received in evidence risk-analysis calculations made by Mr. Czapka at the time which tended to show that he expected to make a profit.

Reference was made to Mr. Czapka's extensive experience in the acquisition and development of industrial property for Magna. This had been one of his chief responsibilities with the company. He had also acquired such property for himself, for example, by taking an equity interest in three Magna plants. Mr. Czapka was said to have had a record of success with such transactions, and there was no evidence otherwise.

Nonetheless there can be no doubt that this was a transaction which had serious attendant risks in the sense that the lender relied entirely on rising property values coupled with a stabilization or reduction in lending rates in order to make this expected profit. No institutional lender constrained by governing legislation could or would do this deal. But, his counsel argued, Mr. Czapka was not such a lender; he was a speculator with unique instincts, a preoccupation with real estate, and the experience, ability, and knowledge to assess this deal as a reasonable risk to assume.

Mr. Czapka was said to have premised his decision to enter this transaction upon his belief that property values would rise substantially, interest rates would drop, and rents would increase, thus permitting the borrowers to pay down prior mortgages and carry his mortgage. Obviously these criteria would be critical to his success. I am unable to conclude that these expectations were unreasonable, given his track record, and subsequent events appear to have proven him correct. Interest rates have dropped, rents have risen, and so perhaps has the value of these properties. I do not believe that this was entirely a matter of luck.

However, the matter does not end there. In light of his knowledge of their circumstances, Mr. Czapka's treatment of the borrowers, Cardiff and Highlands, must be considered in assessing this issue, not merely the results of the transaction, his own expectations for himself, and their reasonableness. Obviously the transaction was not a gift to the borrowers. But just as I must look at Mr. Czapka's circumstances in assessing whether the transaction was unusual, I must also consider the circumstances of the borrowers, Mr. Czapka's knowledge of those circumstances, and his behaviour in light of them.

I have already concluded that in the sense described above this was not a "sweetheart" loan, there being no evidence of collusion or that the terms were detrimental or disadvantageous to a third party. However, by any objective criteria, and considering all the circumstances, the terms of the transaction were unusually beneficial to the borrowers. The transaction itself afforded the borrowers and their parent and affiliated companies substantial and timely relief.

Magna's Knowledge of the Transaction

It will be recalled that I have found that when Mr. Stronach met with Mrs. Stevens on April 4, 1985, she spoke to him without constraint about her needs, and thus that Mr. Stronach was aware of them when he arranged the introduction to Mr. Czapka.

I am satisfied that when he did this he knew that he was turning her over to someone who would provide the relief she was seeking. I am also satisfied that Mr. Stronach took a continuing interest in seeing to it that such relief materialized. In this connection, Mr. Stronach had two conversations with Mr. Czapka. Although the testimony of Mr. Czapka and Mr. Stronach was to the effect that the successful resolution of the matter was not mentioned in these conversations between them, I do not find this credible. Inquiries made by Mr. Stronach of Mr. Czapka on these occasions, which were after the introduction, could only have been to determine whether Mr. Czapka had met Mrs. Stevens' needs. I am entirely satisfied that, directly or indirectly, the response was in the affirmative.

To what extent can Magna be fixed with knowledge of Mr. Stronach's activities? A threshold question is whether or not Mr. Stronach's assistance to Mrs. Stevens can be said to be entirely personal. I do not think it can. He knew of course of her relationship to the minister and, even assuming that his motives in making the arrangements on her behalf were entirely altruistic, he knew that any help would be of interest to the minister as well. In view of the relationship between the minister and Magna, the assistance that Mr. Stronach offered Mrs. Stevens could not be said to be purely personal in the sense of being unrelated, even indirectly, to the interests of Magna.

Was Mr. Stronach's position at Magna sufficiently elevated to result in his actual knowledge being constructively the knowledge of the company? The answer of course is yes. Mr. Stronach was the founder of the company and is its principal shareholder. He is firmly identified in the public mind with Magna and is the one individual who could be said to be its directing mind. The effect of Mr. Stronach's own philosophy on the company is apparent as is, to take the Cape Breton or Class A Stamping projects as examples, his continuing direction of and influence over business ventures. I am satisfied that Mr. Stronach's knowledge of this matter — involving the minister, the minister's wife, a Magna associate, and the use of Magna premises — was Magna's knowledge as well.

Magna's Alleged Facilitation of the Transaction

During the course of the Inquiry the issue was raised whether Magna was a mere passive observer in the loan transaction or whether it knowingly facilitated it. The controversy arises from the uncontroverted fact that Magna's credit was pledged to secure the funds advanced to Cardiff as well as from the manner in which this occurred. It is important to review the events in some detail.

Shortly before Mr. Czapka advanced the loan, he and Mr. James McAlpine, representing Magna, reached an agreement, which was typed up and signed on May 1, 1985. The agreement, which was rather curious, called for Magna to supply Mr. Czapka with a "comfort letter" for $3 million. Loosely defined, a comfort letter is an instrument intended to facilitate the granting of credit to someone on the credit, or at least on the reputation, of another. In return for this comfort letter, Mr. Czapka was to provide Magna with an option to buy three properties on which Magna had factories. Through Lostrock Corp., Mr. Czapka was a co-owner of two of the properties and the owner of the third. His co-owners had given him tacit authority to sell the properties. The option was to buy the three properties for the mortgages plus $3 million. The credit facility was to be secured by: (1) Magna holding the shares of a new company to be incorporated for the purpose of holding the properties; (2) a demand note executed by Mr. Czapka; (3) Mr. Czapka's permission to Magna to withhold moneys owed then or later to Mr. Czapka or his management company, including amounts owed under his consulting agreement; (4) an undertaking by Mr. Czapka not to further mortgage the three properties for one year; and (5) a promise by Mr. Czapka to be personally responsible to Magna should the company pay off any bank loan obtained through the use of the comfort letter.

The comfort letter itself, which was signed by Mr. McAlpine, stated that Mr. Czapka had acquired real estate from time to time as an agent for Magna and requested that he be afforded credit of up to $3 million to conduct his activities on their behalf.

The stated rationale for the arrangement was that Mr. Czapka and officials of Magna had been negotiating for some time over the sale of the three properties on which Magna plants were located and had been unable to reach an agreement. Indeed, the May 1 letter identified the spread between the parties by recording that Mr. Czapka thought the properties were worth $3.8 million while Magna thought they were worth $3.0 million. In the absence of a settled agreement, Mr. Czapka was said to be impatient — to be hinting about selling to persons other than Magna. The arrangement thus gave Magna control over the properties and at the same time gave Mr. Czapka a credit facility to take the place of the proceeds had a deal been made. Negotiations could then continue at a leisurely pace.

Historically, the possibility of a sale of these three properties to Magna arose out of discussions that in late 1984 developed between Mr. Stronach and Mr. Czapka. In these discussions Mr. Stronach was seeking to consolidate Magna's real estate position by converting leasehold interests in the three properties to ownership interests; Mr. Czapka, for his part, was interested in acquiring, for investment purposes, two parcels of vacant land then owned by Magna. One of these parcels was located directly behind Magna's head office in the town of Markham (the Apple Creek property) and the other was a development property located in the town of Vaughan.

Having discussed the subject generally in December 1984, in April 1985 Mr. Czapka presented Magna with offers to sell the three factory properties to Magna for a net amount of $3.2 million (with Magna assuming mortgages of about $1.42 million). At the same time he made offers to purchase the Apple Creek and Vaughan properties for $3.08 million, or roughly the equivalent of the net amount to be paid by Magna for the three factory properties. All five offers contemplated closing in late 1985. By ignoring the mortgages, it was said, the effect of what was being proposed by Mr. Czapka in April 1985 was a two-for-three swap. The offers thus presented by Mr. Czapka were never signed by Magna, and the next event was the negotiation and execution of the May 1 letter and the delivery of the comfort letter.

Returning to the chain of events, the comfort letter having been prepared, Mr. Czapka took it to the Bank of Nova Scotia in Richmond Hill, where he applied for credit first in the name of 622109 Ontario Inc. and ultimately in the name of 624824 Ontario Inc. On May 16, 1985, the day 624824 Ontario Inc. was incorporated, Mr. Czapka drew a cheque for the funds to be advanced to Cardiff on the account of 622109 Ontario Inc. This account was not in funds, but an overdraft was permitted until the credit application was approved, at which time, through use of this credit, funds were transferred to cover the overdraft.

Once the credit was drawn upon, the Bank of Nova Scotia sought to obtain a pledge from Mr. Czapka not to encumber the properties which, in view of the wording of the comfort letter, it presumed he had acquired. In response, Mr. Czapka first signed a pledge in blank without providing particulars of any properties. Thereafter, upon a further request for particulars, he merely advised the bank that the properties were located in Toronto, Oakville, and Barrie — information that fell short of what the bank expected. The bank regarded this tight-lipped response as out of character for Mr. Czapka.

As matters developed, Mr. Czapka did not transfer the three properties to a new company as contemplated in the May 1 agreement. Negotiations proceeded in the autumn on the basis that since the two properties to be acquired by Mr. Czapka were equivalent in value to the net value of the three to be acquired by Magna, there should be a simple two-for-three exchange. In December 1985 separate agreements for each property were signed, which had this effect. In spite of the May 1 agreement, which contemplated the comfort letter's return to Magna upon completion of the acquisition of the three properties by Magna, it was agreed that the letter could be left in place at the bank, thus extending the credit arrangement for Mr. Czapka's benefit.

The actual price set out in the December 1985 agreements for the three properties to be acquired by Magna was exactly the same as in the offers of April 1985. While the price was the same the terms were not. Magna would not take back mortgages securing part of the purchase price nor would it afford Mr. Czapka interest relief. Nevertheless, the fact that the December deals for all five properties were sufficiently close to those proposed by Mr. Czapka in April raised questions of whether there really was an impasse in negotiations in May such as to warrant, in arm's length terms, the issuance of the comfort letter. Was the whole arrangement a ruse to disguise Magna's involvement in funding the loan negotiated by Mr. Czapka and Mrs. Stevens?

Essentially, it was argued that the May 1 agreement and the comfort letter were deliberately concocted documents. In support of this conclusion it was suggested that, for all practical purposes, the two-for-three swap was settled in April 1985; thus, there was nothing left to negotiate in May. It was said that the content of the April offers demonstrates that in fact there was no disagreement over the price such as was outlined in the May 1 agreement. Thus the recital of a disagreement in price was said to be a fiction. If this is true, the only reason for the May 1 agreement would have been to create a vehicle for delivery of the comfort letter. In further support of this scenario it was suggested that the idea of transferring the three properties to a company to be incorporated had no perceptible benefit and, perhaps more important, did not in fact materialize.

It was also argued that there were fundamental inconsistencies between the situation described in the May 1 letter and what actually appeared in the comfort letter. The latter suggested that Mr. Czapka had been in the habit of purchasing property on behalf of Magna in his own name, a fact that was not true. Certainly the comfort letter led the Bank of Nova Scotia, as it would any ordinary reader, to conclude that the funds generated thereby would be used to purchase property on behalf of Magna. Finally, it was argued that the whole exchange of documents was an unrealistic and cumbersome method of achieving a simple objective, and so was suspect.

In response to this theory, counsel for Magna argued that the April 1985 offers did not confirm oral agreements already reached but were unilateral, self-serving instruments designed by Mr. Czapka to draw

Magna into transactions that would be for his benefit. If the situation were otherwise, it was said, the documents would have been signed by Magna. As for the suggestion that the April 1985 offers contained terms that were essentially the same as those ultimately settled upon in December 1985, it was pointed out that there were substantial differences between the April offers and the December agreements, all of which were resolved in December to the disadvantage of Mr. Czapka. This was said to corroborate the statement contained in the May 1 agreement that the parties were then still not ad idem on terms. It was also pointed out that although Mr. Czapka and his partners may not in fact have intended to sell the three properties to strangers if Magna failed to complete the transactions expeditiously, Magna could not have been expected to be aware of this fact. Magna had every reason to accept Mr. Czapka's statement that unless he received a written commitment from Magna, he would have to sell the properties to others.

The "conspiracy theory" was based on the fact that Mr. McAlpine knew by December 1985 that the comfort letter had been used for a purpose other than the one he had intended but was content to leave it in place with the bank. It was suggested that this amounted to evidence that the comfort letter was a ruse, drawn up in the knowledge that it would be used to fund the Cardiff transaction. Mr. McAlpine's response to this suggestion was that the letter was left at the bank in spite of the completion of the transactions simply because it was not a document enforceable against the company, and hence was a matter of indifference to Magna.

From this recitation of the facts it is obvious that the circumstances surrounding the May 1 letter agreement and the comfort letter are somewhat obtuse and complex. In view of the close relationship between Mr. Czapka and Magna, the need for such a cumbersome arrangement is not readily apparent, and its existence does raise some suspicion. Nonetheless, my obligation is clear: I am to find the facts on the evidence presented to me. I conclude that there is insufficient clear and cogent evidence to enable me to find that the May 1 arrangement was something other than a genuine commercial arrangement. The evidence falls short of establishing that the arrangement was a ruse to disguise Magna's financing of the Cardiff loan. In summary, although the funds were ultimately forthcoming as a result of the comfort letter, it is not possible to establish thereby that Magna was other than an unwitting source of such funds.

Mr. Czapka's Alleged Quid Pro Quo

During the Inquiry, evidence was tendered of two real estate transactions involving Mr. Czapka and Magna that generated large profits for Mr. Czapka. One of these transactions has been referred to: the sale by Magna to Mr. Czapka of the Apple Creek property, which was part of the two-for-three swap. The second transaction was the sale to Magna of the so-called "scrapyard" property. In each case Mr. Czapka acquired the properties and shortly thereafter sold them, in one case to a third party and in the other to Magna, for very substantial personal gain. It was suggested that Magna facilitated these transactions, and generated the profit for Mr. Czapka, as a method of compensating him for his services in acting as an intermediary in the loan to Cardiff. Because I have concluded that Magna was not knowingly involved in funding the loan, it is theoretically unnecessary for me to deal with the companion allegation that there was a form of pay-off to Mr. Czapka for functioning as an intermediary. Nonetheless, in fairness to Mr. Czapka and to Magna, I should dispose of this allegation as well.

The Apple Creek property, located behind the head office of Magna, was one of the two properties acquired by Mr. Czapka in the two-for-three swap. As indicated earlier, the purchase had its beginnings in discussions between Mr. Stronach and Mr. Czapka in December 1984. At that time Magna had learned that the property, which was zoned industrial, would likely be rezoned residential property and thus would be surplus to Magna's needs. Magna's solicitors filed a severance application so that the residential portion of the property could be sold expeditiously when the rezoning was complete.

In April 1985 Mr. Czapka presented the offer to purchase the property for $740,000. This offer involved Magna's taking a mortgage back with an interest-free first year. The offer was not accepted by Magna. In December 1985 a deal was struck in the form of the two-for-three swap. The purchase price of the Apple Creek property in this deal was also $740,000. In the interim, between the April offer and the December agreement, the property had been rezoned by a bylaw passed October 21, 1985. The required severance was obtained on January 29, 1986, and the property was conveyed to Mr. Czapka on May 21, 1986. Two months later Mr. Czapka sold the property to a third party for $5 million, thereby realizing a profit in excess of $4 million. Whether the price paid to Magna could be said to have been settled in April 1985 or December 1985, the result is still an extraordinary profit in what was essentially a non-arm's length transaction.

The propriety of the transaction was defended by Messrs. Czapka, Stronach, and McAlpine. Essentially it was justified as part of a swap of properties of equivalent value. It was said that any suggestion that the Apple Creek property was deeply discounted when it was sold to Mr. Czapka, enabling him to generate the profit that he did, was offset by the fact that the three properties sold by Mr. Czapka and his partners to Magna were equally deeply discounted, having regard to the true value of the factories located thereon. It was said that the fixtures and other tenant's improvements located in the buildings were of great value to Magna and were investments that would never have been recovered if the properties had been sold to third parties. Thus, to reiterate, Mr. Czapka's deal in the Apple Creek property transaction was said to have been more than offset by Magna's deal in acquiring the factory properties. Where Mr. Czapka's partners figured in this offsetting exchange is a matter for conjecture, since it was asserted that they had no interest in, and thus did not share in the benefit of, Mr. Czapka's purchase and sale of the Apple Creek property.

Turning to the scrapyard transaction, it was suggested that this was a further occasion where Magna facilitated an extraordinary financial return for Mr. Czapka as a quid pro quo for his involvement in the Cardiff loan. The history is as follows. Mr. Czapka had learned in the spring of 1985 from his solicitor that a scrapyard property was for sale. It was owned by the estate of Mr. Murray Acreman and was located on Woodbine Avenue in Markham. Mr. Czapka expressed an interest in it, there were offers and counter-offers, and, on October 31, 1985, an agreement was reached to purchase the property for $2,586,840. The purchase price was in the order of $1 million below what the estate was originally seeking. The deal closed on December 31, 1985. Less than a month later Mr. Czapka agreed to sell the property to Magna for $3,449,120. This sale closed on February 18, 1986. He thereby realized a profit in excess of $850,000.

Mr. Czapka said that he originally intended to keep the property. He told Mr. Stronach about his acquisition, however, and after some discussion offered to sell it to Magna at market price. Mr. Stronach referred Mr. Czapka to Mr. Manfred Gingl, Magna's president, who dealt with Mr. Czapka on the sale. Mr. Stronach and others testified that there had been a long-standing interest at Magna in acquiring a scrapyard. Mr. Stronach noted that Mr. Czapka was aware of this interest. Mr. Czapka also told Mr. Stronach that on the resale to Magna he would be making quite a bit of money. Mr. Czapka thought that it was possible he had also told others at Magna of his anticipated profit. In any event, Magna's in-house solicitors became aware of Mr. Czapka's profit before closing. As to the market value of the property, it is noteworthy that a valuation obtained by Magna during the Inquiry suggested that the property was worth between $3.4 and $3.7 million.

In spite of the size of the profits realized in these two transactions I am unable to conclude, on the evidence tendered, that they were in any way related to the $2.62 million loan to Cardiff. Even if I had concluded that Magna was knowingly associated with the funding of the Cardiff loan, a conclusion that I have already rejected on the evidence, the factual foundation necessary to enable me to make a connection between profits derived by Mr. Czapka in these transactions and his facilitating the Cardiff loan would be absent. Although Mr. Czapka's singular instinct for profit in real estate matters is remarkable, it does not, having regard to the mandate of this Commission, give rise to an occasion for criticism or condemnation. If there are other reasons for questioning the propriety of these transactions, they do not concern me in this Inquiry.

Mr. Stevens' Knowledge of the Czapka Loan

One of the important questions that emerged from the debate in the House of Commons leading to the establishment of the Inquiry was whether or not the minister was aware of the Czapka loan or at least the lending of money to the York Centre group through the intervention of Frank Stronach. As was repeatedly asserted during the course of the Inquiry, if Mr. Stevens was unaware of the fact of the loan, or its connection with Mr. Stronach, it could not be concluded that there was a real conflict of interest because the requisite knowledge of the relationship between his own economic interests and those of Magna would have been absent. In such circumstances, the most that might be said is that there was an appearance of conflict. Thus, the resolution of this issue of knowledge is central to my responsibilities.

Both Mr. and Mrs. Stevens were asked directly and repeatedly about Mr. Stevens' knowledge of the Czapka loan. The response was simple. For her part, Mrs. Stevens testified that she did not advise Mr. Stevens of the fact of the loan, that the sum of $2.62 million had been raised, of the source of the moneys, or of the relationship between that source and Magna or Mr. Stronach. For his part, Mr. Stevens testified that he had no knowledge of the fact of the loan and thus no knowledge of the source of the funds or the relationship between that source and Magna or Mr. Stronach.

Regrettably, a recitation of this testimony is not an end of the matter. There rests a heavy burden upon me in my role as Commissioner to determine whether I believe it and so conclude that Mr. Stevens had no knowledge of the loan, or whether I disbelieve it and so conclude that he had knowledge. I must make this determination if I am to find the facts as the mandate of the Inquiry requires me to do.

In the earlier section of this report dealing with the role of Noreen Stevens in the York Centre group of companies, I took considerable time to analyze the nature of the communications with respect to the affairs of York Centre that were ongoing between Mr. and Mrs. Stevens. I concluded that indeed Mr. and Mrs. Stevens communicated freely and openly about the affairs of the York Centre group of companies. In coming to that conclusion I relied upon the evidence of communication between Mr. and Mrs. Stevens emerging from a number of events including, among others, the two meetings with Mr. Leiderman, in March 1985 and April 1986; the meetings with Mr. Busby and Mr. Netolitzky with respect to the La Ronge goldplay; the interplay between Mr. and Mrs. Stevens with respect to the Christ coin project; and the advice sought from Mr. Kierans with respect to the bond portfolio. Based upon my analysis of these and other events I concluded that Mr. and Mrs. Stevens did discuss York Centre affairs while the blind trust was in place, including matters of reorganization, refinancing, intercompany loans, and new initiatives for the companies. These findings were made in spite of the testimony of Mr. and Mrs. Stevens, which frequently consisted of a denial of either communication or the nature of matters discussed. It was and remains my conclusion that, to the extent their testimony amounted to a denial that such communications occurred, I do not accept it.

In the same section of the report I pointed out that it was obvious these communications occurred, at least in part, because of the deteriorating financial condition of the company. In light of Mr. Stevens' important role in the overall financial management of the York Centre group prior to his entry into the cabinet, it was obvious he remained involved in its affairs as the situation deteriorated, receiving information and giving advice on matters as they developed. Indeed, I pointed out earlier that Mr. Stevens attempted to facilitate new financing initiatives during this period of deteriorating fortunes. The likelihood of such communication occurring was further advanced by obvious indifference on Mr. Stevens' part to the blind trust.

No useful purpose would be served by repeating my observations about the reasons offered by Mr. and Mrs. Stevens for their purported regime of non-communication. Apart from the fact that such an analysis is redundant in view of my findings with respect to their credibility, these matters have been reviewed elsewhere in this report. Two aspects of their testimony, placed in contradistinction, effectively summarize the situation. Although both Mr. and Mrs. Stevens testified that they did not discuss matters of management of the York Centre group of companies from 1984 onward, they also testified that they saw no reason why Mr. Stevens ought not to receive information with respect to the well-being of the assets in the blind trust, provided communications were limited to conveying information as opposed to involving him in management. In spite of the contradictory nature of this posture, it is clear that extensive information was conveyed to Mr. Stevens, and it could only be described as information relevant to corporate management. That such information was conveyed is not surprising since Mr. and Mrs. Stevens apparently saw no impropriety, notwithstanding the existence of the blind trust, in so doing.

With this background I turn to the issue of whether I ought to accept the evidence of Mr. and Mrs. Stevens that no information was conveyed to Mr. Stevens with respect to the Czapka loan. As pointed out, Mr. Stevens denied from the outset, and even before this Inquiry was launched, that any such information was received. In the face of compelling testimony to the contrary, he denied throughout the Inquiry that any information that ought not to have been conveyed was conveyed. In light of the fact that ongoing information about corporate management was conveyed in a routine manner, what is the appropriate conclusion to draw with respect to Mr. Stevens' knowledge of the Czapka loan?

There are several important circumstances that must be considered in reviewing this question. In the first place, it will be remembered that at the time of the negotiation of the Czapka loan by Noreen Stevens, the York Centre group of companies was experiencing its deepest difficulties financially. In February 1985, shortly after receiving the 1984 financial statements, the Canadian Imperial Bank of Commerce began to require pre-clearing of cheques issued by York Centre. Financing to ease this situation with the bank had not been found by the time Mrs. Stevens met Mr. Stronach. MI Realty had declined the limited partnership proposal in late February. By late March, the two brokerage firms, Burns Fry and Dominion Securities, had advised York Centre of their negative reactions. The Richardson Greenshields proposal had been dropped. Gordon Capital's efforts with Canada Permanent in late March were stalled by the need to find a third party to participate. Mrs. Stevens was still seeking participants in the Equion partnership. These events made the search for financing in the winter and spring of 1985 even more urgent than it was when Mr. Stevens entered the cabinet in the autumn of 1984. Examination of the pace of events corroborates this situation. Mr. Stevens' attempt, in late February/early March 1985, to interest Morgan Grenfell in an equity investment in a member company of the York Centre group demonstrates not only that he was aware of the need but, more importantly, that he was actively involved in attempting to meet it.

The event of singular importance in the progression of events leading to the Czapka loan is the first Leiderman meeting, on March 16, 1985. This meeting occurred just over two weeks before Frank Stronach introduced Noreen Stevens to Anton Czapka. I have repeatedly observed that the business of the Leiderman meeting included discussions about financing of the York Centre group. These discussions were not confined to generalities. The need to raise $3 million and its anticipated disposition was discussed. The relationship between this level of funding and the sum of money actually raised through Mr. Czapka is no coincidence. Mr. Leiderman said that Mr. Stevens was the source of the ideas at the meeting. The fact that he would be in Vancouver in early April and would approach his Canarim connection over possible financing was also discussed. It was pointed out during the course of the Inquiry that the financing which, it was contemplated, might be discussed with Canarim related to Royal Cougar and not Cardiff. In analyzing discussions on the subject of the need to raise capital for the York Centre group I make no distinction between the vehicle chosen for this purpose among the various members of the group. The lively creation and extinguishing of intercompany loans among the various companies makes it quite clear that whatever member of the group was in a position, by whatever means, to raise money would be called upon to do so in the interest of the group as a whole. The planned disposition of the $3 million to be raised, as noted by Mr. Leiderman, is corroborative of this fact. Thus the general subject of refinancing, the need for $3 million, and Mr. Stevens' participation in this activity were all discussed with Mr. Leiderman — all of this in the presence of, and with the participation of, Mrs. Stevens.

Approximately one month after the meeting of March 16, Mrs. Stevens was successful in negotiating the Czapka loan. In this process $2.62 million in cash was made available to the group on terms that provided a perfect answer to cash flow problems. The urgent fiscal needs of the York Centre group were thus met.

In spite of the collective relief afforded by this unexpected and welcome news; in spite of Mrs. Stevens' assertion that she felt free to convey information to Mr. Stevens so long as it did not involve him in management; in spite of the fact that the raising of this money would make it unnecessary, at least for the immediate future, for Mr. Stevens to be further troubled by the existing financial problems of the group; and in spite of Mrs. Stevens' willingness to convey less consequential information to her husband — Mr. and Mrs. Stevens insist that he was told nothing about this event. He was not advised that more than $2 million had been raised; he was not advised of the participating mortgage, a form of investment that he had recommended in the autumn of 1984; he was not advised of the cash flow benefits; he was not advised of Mr. Stronach's role in introducing the lender; indeed, he was not even advised that he could breathe easier because refinancing affecting his own personal fortunes had been arranged.

In spite of the fact that Mr. Stevens was, at the time, a busy minister of the Crown with heavy responsibilities and that Mrs. Stevens had her own career to consider, they nonetheless shared as a principal enjoyment in life the analysis of investments and financial matters. In such circumstances I am unable to believe either Mr. or Mrs. Stevens when they assert that information was not conveyed to Mr. Stevens with respect to the Czapka loan. It would require me to ignore not only all the evidence that has been advanced in this Inquiry but also the dictates of ordinary human behaviour to conclude, in light of their existing pattern of communication, that on this one subject and for no reason that would not have been equally applicable to all the other subjects they did discuss, they somehow did not communicate. I do not accept this evidence. I find as a fact that information was conveyed to Mr. Stevens acquainting him with negotiations for the Czapka loan as they were proceeding and the loan agreement itself at the time that it was made.

Mr. Stevens repeatedly asserted that he had never heard of Anton Czapka. As a statement of isolated fact, I accept this evidence. As a basis of distancing himself from any knowledge of Mr. Czapka's loan, I reject it. Others, including Shirley Walker and Ted Rowe, were made aware of the loan in its details without knowing of Mr. Czapka or remembering his name. For the reasons outlined earlier in this section I am satisfied, and I so find, that Mr. Stevens was advised of the initial proposals, the amount of money raised, the fact that it was a participating mortgage and thus that properties would not have to be sold, the fact that there was interest relief in the near term, and the fact that the transaction occurred as a result of the intervention of Frank Stronach, who introduced Noreen Stevens to a person at Magna who, in turn, provided the funds.

Findings Regarding Conflict of Interest

A great deal of evidence called at this Inquiry focused on the allegation that, in his dealings with regard to loans, grants, and other assistance to

Magna from the Department of Regional Industrial Expansion, Sinclair Stevens was in a position of conflict of interest because his wife Noreen Stevens had obtained a $2.62 million loan from a numbered company controlled by Anton Czapka, a Magna-related individual.

In light of the evidence and in the context of the definition of conflict of interest set out earlier in this report, I find that this allegation is well founded and that the minister's private economic interest, of which he was aware, was sufficient to influence the discharge of his public duty. While I do not intend to re-examine the evidence regarding Magna's dealings with DRIE and the Czapka loan, it is helpful here to summarize the salient conclusions in those sections which give rise to the finding of conflict of interest on the part of Mr. Stevens.

I have found that during the month of April 1985, through the intervention of Frank Stronach, Noreen Stevens negotiated a $2.62 million loan from Anton Czapka, a Magna-related individual. This money was advanced to Cardiff in the form of a participating mortgage and was interest free in the first year. The result was to provide significant cash relief to the York Centre group of companies. I have also found that one of the features of this transaction was an anticipated long-term relationship in the form of a partnership, the terms of which were expressed in the land development agreement signed by Mrs. Stevens and Mr. Czapka.

Further, I have found that Mr. Stevens was aware of the negotiations and, ultimately, the fact that $2.62 million was raised by way of a participating mortgage with an interest-free period. I have found that Mr. Stevens was aware that Frank Stronach introduced Noreen Stevens to a person at Magna with whom the negotiations were undertaken and concluded. As well, since the transaction was a participating mortgage, Mr. Stevens knew that a Magna-related person would be an ongoing participant in the affairs of Cardiff, having a supervisory relationship over the timing of any sale of the mortgaged properties. In such circumstances, a need to maintain a positive relationship with the lender is obvious. Also, the terms of the loan can only be considered as beneficial to the borrowers. The favourable nature of these terms implies the existence of a sense of obligation that could influence the discharge of public duties. I find that in the circumstances of this ongoing relationship and the advantageous terms of the loan, there is no doubt Mr. Stevens had a private economic interest that was sufficient to influence the discharge of his public duty.

From early April 1985, when Mr. Stevens acquired knowledge of the negotiations with Mr. Czapka, until his resignation from public office, he had extensive dealings with Magna in his capacity as minister of DRIE. Each of these dealings was an occasion of real conflict of interest. In particular, a conflict of interest existed in relation to the following:

- personally approving the applications for federal assistance to Multimatic Inc., Master Precision, and Integram on April 17, 1985, at a meeting of the Economic Development Board. These applications totalled $5,033,000 in federal assistance;

- personally approving Magna's application for $10.2 million for the Class A Stamping plant on April 17, 1985, subject to approval by Treasury Board and contingent upon an equivalent provincial contribution;
- pressing for and authorizing the presentation to the Treasury Board of the application for federal assistance for the Class A Stamping plant in June 1985;
- entering into a cancellation agreement with Magna and recommending to cabinet an amendment to the Enterprise Development Regulations enabling the cancellation of the Polyrim stock option in July and August 1985; and
- decisions made, directions given, and agreements entered into, leading to the $64.2 million in federal assistance ultimately recommended for approval for the Cape Breton project in April 1986.

Although each of these activities were occasions of conflict of interest on the part of Mr. Stevens, it is important that I indicate that I find the evidence tendered in relation to the federal assistance received by Magna established that no preferential treatment was accorded. In the case of IRD program applications, each moved through the established approval process with the department substantially supporting the applications. In relation to other decisions bestowing benefits outside the IRD program, each was consistent with governmental and departmental policy and commensurate with the position Magna held in the automotive parts sector. There was thus no preferential treatment. Nonetheless, Mr. Stevens was still in a position of conflict of interest. As noted in Chapter 3, a conflict of interest can arise even where, as here, the private interests and public duties were congruent.

Magna's Interest in Canadair

The Inquiry heard evidence of one other allegation arising out of Mr. Stevens' dealings with Magna. It was alleged that, because Mrs. Stevens had obtained a $2.62 million loan from a company controlled by a Magna-related individual, Mr. Stevens was in a position of conflict of interest with regard to Magna's proposal to acquire an interest in Canadair.

Background

In October 1984 Sinclair Stevens included Mr. Frank Stronach, the chairman of Magna International, in a list of candidates he was recommending for appointment to the Canada Development Investment

Corporation (CDIC) board. Mr. Stronach was duly appointed to the CDIC board by order in council, with effect from 26 October 1984.

By early 1985, as described in Chapter 21, Burns Fry had been retained as a financial consultant to advise CDIC on the privatization of Canadair. Its strategy in the discharge of its mandate was to make direct approaches to corporations that might be likely candidates for the acquisition of the company. In this manner it approached Magna in May 1985. Although there was no response from Magna, the company was included in a list of possible candidates in the hope that it might express an interest.

In early January 1986 Mr. Gil Bennett, the president of Canadair, in conversation with Mr. Jack Lawrence, the chairman of Burns Fry, expressed an interest in meeting Mr. Stronach. Mr. Stronach met with Mr. Bennett and, in mid-January, Mr. Stronach contacted the minister's office and arranged for a later meeting with Mr. Stevens. During a conference telephone call prior to this meeting, Mr. Stevens informed Mr. Paul Marshall, president of CDIC, Mr. John MacNaughton of Burns Fry, and Mr. Bob Brown, his associate deputy minister, that Mr. Stronach was meeting with him on Canadair and he asked them what they knew about Mr. Stronach's interest in the company. None of them was aware of such an interest.

On January 22, 1986, Mr. Stevens met with Mr. Stronach and they discussed Canadair. Mr. Stronach brought with him a letter dated January 21, 1986, that set out his proposal for the privatization of Canadair. The letter began as follows:

> This letter will confirm our interest to participate in transforming Canadair from a crown corporation into a public corporation.
>
> Magna would be willing to be the catalyst to bring about this transformation. We would propose that this public company would have an approximate share structure such as;
>
> | | |
> |---|---|
> | Magna | 30% |
> | Employees | 20% |
> | Management | 10% |
>
> and the Government of Canada would temporarily hold 40% which in due course would be offered to the public.
>
> (Exhibit 129, p. 66)

The letter also proposed that Canadair be operated in accordance with the corporate philosophy of Magna itself. Mr. Stevens testified that at the meeting Mr. Stronach also indicated that Magna would be interested in a minority position in the company along with a Quebec-based partner.

During the meeting, Mr. Stevens called Mr. Brown and asked him to meet with Mr. Stronach about Canadair. Mr. Stronach and Mr. Brown met for 15–20 minutes and Mr. Stronach gave Mr. Brown the January 21 letter, which Mr. Brown then sent on to Mr. Marshall of CDIC. The letter and the meetings of January 22 initiated an ongoing communication between Magna and Burns Fry in which Magna continued to express an interest in the privatization of Canadair on the basis outlined in the letter. A draft audited financial statement for Canadair for the year ending 1985 was sent by Burns Fry to Magna. In late March 1986 there were internal discussions at Magna relating to the deal, at which time public and political perceptions of the various Canadair bidders were discussed.

In April 1986, as no formal bids had been received, Burns Fry adopted a course of identifying prospects by direct solicitation. Five "potential purchasers" for Canadair were thus identified. Magna was on the list, in addition to Bombardier, Fleet Consortium, Canadian Aero Space Technology Limited, and the IMP Group. Mr. MacNaughton took steps to ensure that no company was included on this list unless it was seriously interested. Indeed, he communicated directly with Mr. Stronach and confirmed Magna's continuing interest. On April 2, 1986, Mr. Marshall informed Mr. Stevens, in his capacity as minister, of these five potential purchasers. A press release followed and the five companies were identified. When the media made inquiries of Magna, it confirmed its presence on the list, indicating that since the process was competitive, the matter could not be discussed.

In mid-April a meeting between DRIE and Magna was held in Ottawa to discuss a possible joint-venture partner for Magna for the acquisition of Canadair. Mr. Stevens, in his capacity as minister, was advised of these developments by written communication.

Throughout this period it is clear that Magna's interest remained as expressed in its January 21 letter. At no time did it prepare anything more formal, but it did confirm its interest in Canadair as outlined in this proposal.

In late April questions were raised in the press about conflicts of interest and, more specifically, those concerning Magna. As a result, on May 16, 1986, Mr. Stronach wrote to Mr. Marshall responding to the allegations of conflict and signifying his intent to resign as a director of CDIC. Subsequently, on June 3, 1986, his resignation was accepted by the board. At the same meeting and after his resignation had been accepted, Mr. Stronach, along with other interested bidders, made a presentation to the board of CDIC with respect to the privatization of Canadair. Ultimately, CDIC reported to Mr. Stevens' successor, Mr. Donald Mazankowski, on the bidders who had made presentations on June 3, 1986, and recommended another bidder — Bombardier.

There was extensive debate during the Inquiry as to whether or not the January 21 letter amounted to a "bid." In normal commercial parlance, a bid is a written response, meeting prescribed conditions with respect to process and price, in accordance with an invitation to tender. In this sense, the letter of January 21 was clearly not a bid. Rather, it was a proposal which contemplated converting Canadair into a public company on the basis of a substantial equity interest being taken by Magna.

Although much was made of the fact that Magna at no time delivered a formal bid, the same can be said of all the other corporations or groups who expressed an interest in the privatization of Canadair. It was also said that no one took Magna's proposal seriously. Neither of these points effectively deflects the concern about conflicts of interest. The clear fact was that from mid-January 1986 until June 3, 1986, Magna was expressing a real interest in the acquisition of equity in Canadair, and it was being encouraged in this display of interest by CDIC's advisers. It is equally clear that CDIC regarded Magna as a legitimate prospect for the acquisition of Canadair and, indeed, publicly identified it as a potential purchaser.

Position of Mr. Stevens

I have earlier concluded that the role of Mr. Stevens as minister of DRIE in the processing and approval of federal assistance to Magna, coupled with Mr. Stevens' knowledge that Mrs. Stevens had been successful in raising a substantial sum of money for the York Centre group of companies through the intervention of Frank Stronach, placed Mr. Stevens in a position of real conflict of interest. The occasions for conflict of interest began in April 1985, when he learned of the negotiations leading to the Czapka loan, and continued until his resignation in May 1986. However, by reason of the fact that Magna's interest in acquiring Canadair is the subject of a separate allegation, it should be considered separately.

Perhaps the preferred method of analyzing this situation is to assume that, prior to Magna's display of interest in acquiring Canadair in January 1986, Mr. Stevens in his ministerial capacity had had no other DRIE-related responsibilities with Magna and that there was thus no pre-existing conflict. What then would be the situation of conflict, if any, arising out of the Canadair events? In order to answer this question it is important to understand the minister's role and responsibilities with respect to privatization in general and the Canadair sale in particular.

As minister responsible for privatization, Mr. Stevens was involved in the process. Both Mr. Marshall and senior officials of the minister's department reported to him generally on their progress, including the strategy adopted by the CDIC board and its advisers for attracting interested bidders. Indeed, Mr. Stevens maintained an office in the CDIC offices in Toronto and was in regular communication with Mr. Marshall. The subject of these communications must necessarily have been the implementation of government policy that most directly affected CDIC — namely, privatization.

With regard to Magna's interest in Canadair, apart from the meeting of January 22, there were specific instances in which the reporting chain made Mr. Stevens aware of the encouragement of Magna's interest and the relationship between Magna and other interested parties. Departmental officials were involved in the process of attempting to generate a joint-venture partner to strengthen the Magna bid, and the minister received a written report on this activity. He was advised in due time by Mr. Marshall that CDIC had narrowed the interest group to five "potential purchasers," one of which was Magna, and he was made aware of the fact that there was to be communication of this information to the public.

In summary, Mr. Stevens bore ministerial responsibility for the privatization process, including that of Canadair. Moreover, Mr. Stevens met with Mr. Stronach on Canadair, was the actual recipient of Magna's proposal, and facilitated its placement into the proper hands through his departmental staff. Mr. Stevens' participation as the privatization minister in the January 22 meeting with Mr. Stronach was an exercise of his public duties and responsibilities that could only have encouraged Magna. I find accordingly that, in the light of Mr. Stevens' knowledge of the raising of substantial sums for the York Centre group of companies through the intervention of Frank Stronach, his involvement in the meeting of January 22, 1986, created a situation of real conflict of interest.

It was also alleged that a conflict of interest arose in October 1984 when Mr. Stevens recommended Mr. Stronach for appointment to the CDIC board. However, there was no conflict in October 1984 since at that date no steps had yet been taken by Mrs. Stevens to arrange financing for the York Centre group through Mr. Stronach, nor had Magna yet expressed an interest in Canadair.

Position of Mr. Stronach

The conflict of interest arising from the January 22, 1986, meeting involved Mr. Stevens, not Mr. Stronach. However, there were also allegations that Mr. Stronach was in a position of conflict of interest as a director of CDIC at a time when Magna was seeking to acquire an interest in Canadair, a CDIC asset. Although not strictly within my terms of reference, I feel obliged to deal with this allegation in fairness to Mr. Stronach. As is developed in Chapter 21, it is clear that at the relevant time the directors of CDIC were proceeding on the legitimate assumption that the ordinary private sector rules for the management of conflicts, such as those set out, for example, in the Canada Business Corporations Act, applied to the affairs of CDIC. With regard to Mr. Stronach in his capacity as a director of CDIC, it is clear that after Magna had expressed its interest in Canadair and prior to his resignation as a CDIC director, Mr. Stronach did not attend nor did he vote at meetings when the divestiture of Canadair was discussed. A formal declaration of his interest was not required as it was self-evident. Magna did not receive any information about Canadair not available to other potential bidders. Accordingly, I find that Mr. Stronach was not in a position of real conflict as a CDIC director.

Chapter 21

The Allegations Relating to CDIC and Bay Street

One of the major groups of allegations put before this Inquiry concerned Mr. Stevens' dealings with CDIC. As the minister responsible for CDIC, a parent crown corporation holding certain federally owned assets, Mr. Stevens was charged with overseeing the government's program of privatizing these assets. The assets were described earlier and are set out in figure 4.3. Mr. Stevens was anxious to implement the privatization process as expeditiously as possible, and upon his appointment as the responsible minister he turned his attention to CDIC and the privatization mandate. The allegations of conflict of interest arose because of the juxtaposition of Mr. Stevens' public duties in carrying out this responsibility and his private business interests.

The allegations arose as follows. Mr. Stevens was involved in choosing as directors of CDIC four men considered to be associated with Brascan, its affiliates, or subsidiaries (Mr. Trevor Eyton, Mr. Paul Marshall, Mr. Pat Keenan, and Mr. Antoine Turmel) and was concerned with formulating policy guidelines with regard to CDIC directors and the bidding for CDIC assets. Mr. Stevens was also involved in the approval of contracts to three investment firms to offer advice to CDIC or the Government of Canada on privatization matters (Burns Fry, Dominion Securities, and Gordon Capital). Further, Mr. Stevens approved the purchase of a large block of the government's shares of CDC by Noranda Inc. (Noranda), a Brascan affiliate, during a sale managed by CDIC.

At or about the same time, York Centre was approaching these same individuals or financial institutions in its search for financing. In particular, the York Centre management, through Mr. Rowe and Mrs. Stevens, were pursuing financing possibilities with Mr. Eyton and a number of his colleagues from the Brascan group of companies, and also with Burns Fry, Dominion Securities, and Gordon Capital.

Because of York Centre's activities, it was alleged that, in his dealings as the minister responsible for CDIC, Mr. Stevens was in a position of conflict of interest with regard to:

1. the appointment of certain CDIC directors and committee members, and a decision to permit companies associated with certain CDIC directors to acquire CDIC assets (Brascan and CDIC assets);

2. the award of advisory contracts to Burns Fry and Dominion Securities and the negotiation or approval of fees under these contracts;
3. the award of an advisory contract to Gordon Capital and the negotiation or approval of fees under this contract; and
4. the sale of shares of CDC.

Let me now turn to the allegations in more detail.

Brascan and CDIC Assets

The allegation of conflict of interest over Brascan and the CDIC assets arose for several reasons: first, because of Mr. Eyton's involvement in York Centre's search for financing; secondly, because of Mr. Stevens' role in choosing as CDIC directors and members of its Divestiture Committee persons with close ties to Brascan; and thirdly, because of the alleged interest that Brascan and/or its subsidiaries or affiliates had in the assets to be divested. Mr. Stevens was alleged to have taken a number of steps to assist this interest, the first being the appointments, which afforded "Brascan persons" privileged access to information about the assets and the divestiture process, as well as a say in it. As the Inquiry progressed, the allegation was narrowed to the following issues: the significance, if any, of Mr. Stevens' role in the appointments of certain CDIC directors; his role in a change of policy that was said to have allowed Noranda to gain access to and develop an interest in Eldorado, a CDIC asset; and his role in a decision permitting Noranda to acquire a block of the government's shares in CDC. As the CDC share sale was a separate allegation, which also involved a number of individuals and institutions not associated with Brascan, it is considered in a later section of this chapter.

Appointment of CDIC Directors

The essence of the appointments allegation is that Mr. Stevens, knowing of and indeed initiating the approach to Mr. Eyton and Brascan for their assistance on the York Centre financing, nonetheless appointed Mr. Eyton and three other "Brascan-related" individuals to the CDIC board of directors and its Divestiture Committee.

Mr. Stevens' Role in the Appointments

The allegation regarding the appointment of "Brascan persons" to the board of directors and Divestiture Committee of CDIC concerned four individuals: Trevor Eyton, Paul Marshall, Pat Keenan, and Antoine Turmel. Set out in figure 21.1, and accepted by Mr. Eyton in his testimony as substantially correct, is a chart showing the ownership relationships among companies, including Brascan, in which the holding company Edper Investments Limited has direct or indirect investment.

Mr. Eyton testified that he is a director of Hees and all but three of the Brascan companies (Wellington Insurance Company, Lonvest Corporation, and Brascan Brazil Group), that he is president of Brascan Holdings Limited and Brascan, and that he is a member of the executive committees of Noranda and Royal Trustco Limited. Mr. Marshall testified that he was a director of Brascan, Brascade Resources, Westmin Resources Limited (Westmin), a Brascan subsidiary, and Noranda, and president of Brascade and Westmin. Mr. Keenan, originally a member of a group assisting with Edper's initial investment in Brascan, was at the relevant time an outside director of Brascan and Westmin. Mr. Turmel had been associated with Noranda before its takeover by Brascan and was a director of Noranda.

In view of the sinister light cast by the allegations on these individuals, it is important to make clear that only two of them, Trevor Eyton and Pat Keenan, had any involvement with York Centre and only Mr. Eyton, on the evidence, took an active role in attempting to assist York Centre. Mr. Turmel was a director of Noranda but beyond that could not in fairness be described as a "Brascan" person, and did not have any involvement with York Centre's search for financing. Mr. Marshall, though clearly connected to Brascan, had no knowledge of York Centre whatsoever.

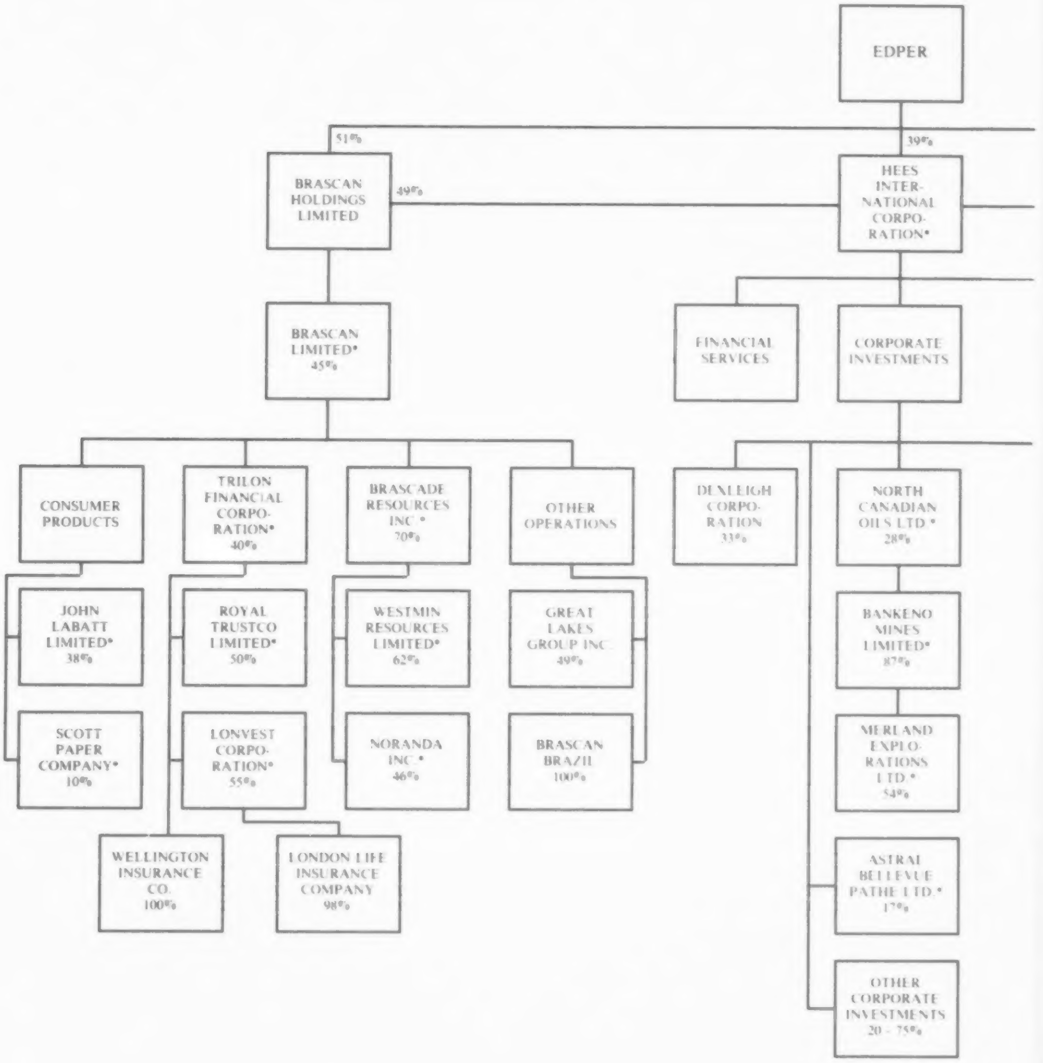
The background to the appointments was as follows. Mr. Eyton met with Mr. Stevens on two occasions at the Stevens farm in late September or early October 1984. Mr. Stevens was interested in attracting the resources of Brascan, and Mr. Eyton in particular, to assist in the privatization process, especially of the assets that CDIC owned or managed. Mr. Stevens hoped that Mr. Eyton would agree to serve as chief executive officer of CDIC. In addition, Mr. Stevens sought the involvement of other Brascan personnel to play a merchant banking role in attracting purchasers for the assets to be divested.

Mr. Stevens' special assistant, Mr. Paul Brown, was at the first of these meetings. He recalled that Mr. Stevens raised the possibility of an executive interchange involving Brascan personnel and CDIC and of problems that then would occur should Brascan want to bid on any CDIC assets directly.

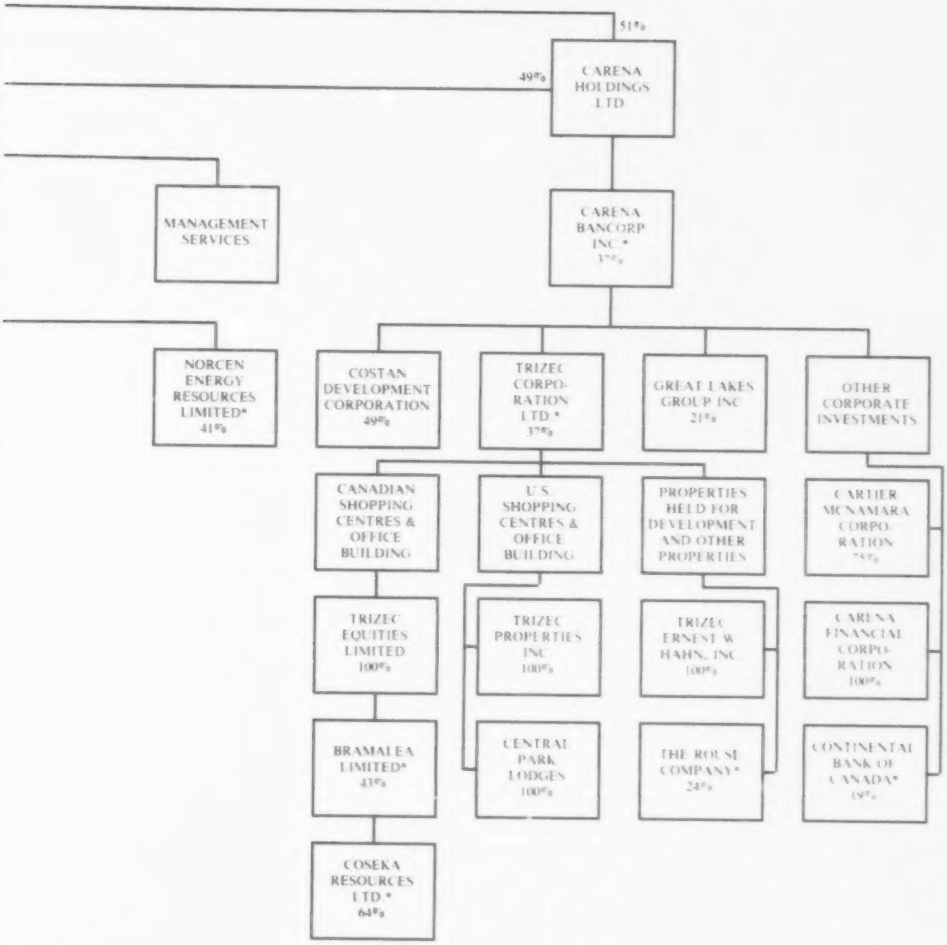
During the two meetings and the period shortly thereafter, Mr. Eyton tried to discourage Mr. Stevens' suggestion that a large group of Brascan personnel, including himself, become involved with CDIC and privatization. Instead, he put forward the name of Mr. Paul Marshall, the president of Westmin. Ultimately, Mr. Marshall agreed to serve as a director and chief executive officer of CDIC at the nominal salary of $1 per year, with Westmin continuing his ordinary remuneration.

On October 16, 1984, Mr. Eyton and Mr. Marshall met with Mr. Stevens in Ottawa. The CDIC appointments were discussed and various names suggested. Mr. Marshall was keen to have both Mr. Eyton and Mr. Keenan on the board of directors. He respected their abilities and valued their advice. Mr. Eyton suggested a number of names, including that of Mr. Keenan. Mr. Eyton testified that at this meeting he probably knew that he would be appointed to the CDIC board.

Figure 21.1 Ownership Relationships of Holdings of Edper Investments


EDPER
51%
39%
BRASCAN HOLDINGS LIMITED
49%
HEES INTER-NATIONAL CORPORATION*
BRASCAN LIMITED* 45%
FINANCIAL SERVICES
CORPORATE INVESTMENTS
CONSUMER PRODUCTS
TRILON FINANCIAL CORPORATION* 40%
BRASCADE RESOURCES INC.* 70%
OTHER OPERATIONS
DEXLEIGH CORPORATION 33%
NORTH CANADIAN OILS LTD.* 28%
JOHN LABATT LIMITED* 38%
ROYAL TRUSTCO LIMITED* 50%
WESTMIN RESOURCES LIMITED* 62%
GREAT LAKES GROUP INC. 49%
BANKENO MINES LIMITED* 87%
SCOTT PAPER COMPANY* 10%
LONVEST CORPORATION* 55%
NORANDA INC.* 46%
BRASCAN BRAZIL 100%
MERLAND EXPLORATIONS LTD.* 54%
WELLINGTON INSURANCE CO. 100%
LONDON LIFE INSURANCE COMPANY 98%
ASTRAL BELLEVUE PATHE LTD.* 17%
OTHER CORPORATE INVESTMENTS 20 - 75%

*PUBLIC COMPANIES
Source: Exhibit 158



51%
49%
CARENA HOLDINGS LTD
MANAGEMENT SERVICES
CARENA BANCORP INC.* 37%
NORCEN ENERGY RESOURCES LIMITED* 41%
COSTAN DEVELOPMENT CORPORATION 49%
TRIZEC CORPORATION LTD.* 37%
GREAT LAKES GROUP INC 21%
OTHER CORPORATE INVESTMENTS
CANADIAN SHOPPING CENTRES & OFFICE BUILDING
U.S. SHOPPING CENTRES & OFFICE BUILDING
PROPERTIES HELD FOR DEVELOPMENT AND OTHER PROPERTIES
CARTIER MCNAMARA CORPORATION 75%
TRIZEC EQUITIES LIMITED 100%
TRIZEC PROPERTIES INC 100%
TRIZEC ERNEST W. HAHN, INC 100%
CARENA FINANCIAL CORPORATION 100%
BRAMALEA LIMITED* 43%
CENTRAL PARK LODGES 100%
THE ROUSE COMPANY* 24%
CONTINENTAL BANK OF CANADA* 19%
COSEKA RESOURCES LTD.* 64%

On October 22, 1984, on Mr. Stevens' recommendation, the Privy Council appointed seven new directors to the then 16-member board of CDIC, including Messrs. Eyton, Marshall, Keenan, and Turmel. On October 26, 1984, and October 30, 1984, orders in council were issued formally appointing the CDIC board and Mr. Marshall as its president. A public announcement of the appointments was made on October 30, 1984.

In organizing for the privatization effort, the CDIC board formed a number of committees in November 1984. It was Mr. Marshall's idea to establish a divestiture committee. He saw this committee as serving as his ad hoc adviser on privatization and for this reason sought a membership that would be available to him on short notice. Mr. Marshall advised Mr. Stevens through Mr. William (Bill) Teschke, then deputy minister of DRIE and a director of CDIC, of his desire to form such a committee and, also through Mr. Teschke, Mr. Stevens agreed.

On November 6, 1984, Mr. Marshall advised Mr. Paul Brown of six suggested candidates for the committee, among them Mr. Marshall himself, Mr. Eyton, and Mr. Turmel. Mr. Stevens approved the suggested members. On December 6, 1984, the CDIC board approved the establishment of what was now a seven-member Divestiture Committee, which included Mr. Eyton, Mr. Marshall, Mr. Turmel, and Mr. Keenan. The committee met informally and irregularly. It took no votes, reaching decisions through consensus after discussion. Some but not all of its meetings were recorded in minutes. Of necessity and by design, the committee had greater and more timely access to information about interested parties, the status of divestiture, and developments in government policy than did the board. Mr. Marshall sought advice through such a forum because he felt the full board would be unable to do the task effectively.

It was suggested in argument before me that Mr. Stevens did not play a decision-making role in the appointments to the CDIC board and of Mr. Marshall, and that the cabinet actually made the decision. Although the cabinet formally made the appointments, Mr. Stevens recommended these individuals for appointment, thus exercising a public duty. Indeed, Mr. Teschke testified that such recommendations were part of his mandate. Mr. Teschke also testified that the seven appointees suggested by Mr. Stevens went through to the appointment stage with consultation on only two of the names with other cabinet members.

With regard to the establishment and membership of the Divestiture Committee, Mr. Stevens undoubtedly took a more passive role. However, he clearly was given an opportunity to comment and presumably to object if he so wished.

I conclude that Mr. Stevens exercised a public duty or responsibility with regard to the CDIC board appointments, Mr. Marshall's executive appointment, and the creation and staffing of the Divestiture Committee.

The appointment of a majority of so-called Brascan persons to the committee might be seen to raise questions of propriety if the committee had been charged with decision-making power, if Brascan companies had been permitted at the time to acquire CDIC assets, and if the committee itself had operated by taking votes on issues before it. However, the evidence established only that the committee functioned in a front-line advisory fashion to Mr. Marshall and the government. It had no decision-making power. It took no votes but rather operated by consensus. There was no evidence to suggest that decisions on advice were ever taken without the input of persons other than Mr. Marshall and Mr. Eyton. Further, the decision to create such a committee and to include these individuals among its members was consistent with the public policy objectives sought through the assistance of Brascan.

Mr. Eyton's Efforts to Assist York Centre

As chief executive officer of Brascan, Mr. Eyton played an important and influential role in marshalling the resources of the Bay Street financial community, and particularly those of Brascan, Hees, Burns Fry, Dominion Securities, and Gordon Capital, in his efforts to assist York Centre. These efforts ultimately came to naught, but they stretched over ten months and they were not insignificant.

Mr. Eyton's involvement came about as a result of a dinner meeting Mr. and Mrs. Stevens had with Mr. Jim Davies of Richardson Greenshields on October 19, 1984. During the course of the dinner, Mr. Stevens suggested that Mr. Davies contact Mr. Eyton for advice or assistance on the York Centre financing. On October 29, 1984, Mr. Davies wrote a letter to Mr. Eyton, the first paragraph of which read as follows:

> At the suggestion of Honorable Sinclair Stevens, P.C. M.P., I was attempting to contact you last week in connection with a proposed private placement of Unsecured Floating Rate Notes (the "Notes") of York Centre Corporation ("York Centre").
>
> (Exhibit 17)

Enclosed with the letter was a preliminary offering memorandum for an issue of York Centre floating-rate notes. Mr. Rowe contacted Mr. Eyton shortly after the letter was sent. Mr. Rowe testified that one of his reasons for approaching Mr. Eyton was that he thought Hees might be interested in investing in the issue. Mr. Davies testified that, under an agreement with York Centre, Richardson Greenshields had an "exclusive right to obtain commitments from investors . . . until December 15, 1984" (Exhibit 112, p. 86). It is clear that what was being sought from Mr. Eyton was potential investors and that these might include Hees.

Mr. Rowe and Mrs. Stevens subsequently met with Mr. Eyton and others in early November 1984 to discuss the proposal. Mr. Eyton agreed to have it reviewed and sent it to Mr. Tim Casgrain and Mr. Manfred Walt at Hees. Mr. Rowe set up a subsequent meeting with Hees.

During November 1984 there were efforts to interest Mr. Keenan in the Richardson Greenshields proposal as well. Entries in Miss Walker's diaries early in November record the approach to Mr. Keenan, and on November 12 there is an entry referring to Mr. Davies and Mr. Keenan who met on that date (BB–6–33). This meeting was followed by correspondence between Mr. Davies and Mr. Keenan and later Mr. Davies and Mr. Frank Penny of Mr. Keenan's company Keewhit Investments as well as correspondence between Mr. Eyton and Mr. Keenan regarding York Centre financing.

It is not clear how the approach to Mr. Keenan came to be made. Mr. Eyton, though unable to recall whether he had referred either Mr. Davies or Mr. Rowe to Mr. Keenan, thought that he had not. He recalled being telephoned by Mr. Keenan about the matter and that he had told Mr. Keenan about York Centre's cash flow problems. In any event, any interest that Mr. Keenan or Keewhit Investments may have had in reviewing the York Centre financing proposal disappeared by December 1984.

Mr. Rowe attended two meetings with Mr. Casgrain and Mr. Walt of Hees, the second of which occurred on December 10, 1984, at York Centre's offices and was attended by several York Centre personnel. The next day Mr. Casgrain and Mr. Walt reported to Mr. Eyton by memorandum that "the proposed investment in York does not meet Hees' investment criteria," giving a number of reasons (Exhibit 159, p. 97). Mr. Eyton testified that he communicated the gist of this memorandum to Mr. Rowe. Later in December, Miss Walker recorded several of the points from the memorandum in her diary (BB–8–5).

Mr. Eyton testified that he had invited Mr. Rowe to contact him further and that Mr. Rowe did so in January 1985. As a result, Mr. Eyton telephoned Mr. Tony Fell of Dominion Securities and Mr. Jack Lawrence of Burns Fry to seek their assistance or advice in considering financing possibilities for York Centre. They agreed to assist and the activities of both firms in this regard are described in the next section of this chapter.

Towards the end of April or in early May 1985, Ms. Jo Bennett of Gordon Capital sought to interest Mr. Eyton in having Brascan or one of its companies participate as a third party in one of her financing proposals for York Centre. (The efforts of Ms. Bennett and Gordon Capital to assist York Centre's financing initiatives are described in a later section of this chapter.) On May 17, 1985, Mr. Eyton and Mr. Ken Clarke of Great Lakes, a Brascan affiliate, met with Ms. Bennett, Mrs. Stevens, and Mr. Rowe.

When she learned that this idea would not interest Great Lakes, Ms. Bennett developed another proposal that involved a straight share offering. Ms. Bennett forwarded this proposal to Mr. Eyton on June 13, 1985, and it was discussed by him and the same group that met on May

17 at a meeting on July 5, 1985. Following this meeting, Mr. Eyton again phoned Mr. Lawrence of Burns Fry and Mr. Fell of Dominion Securities and asked them to assess this new proposal and meet with him on it.

On August 7, 1985, Mr. Eyton and Mr. Clarke met with Mr. Fell, Mr. Lawrence, and Mr. Neil Baker of Gordon Capital to discuss what could be done for York Centre. After a half-hour meeting it was concluded that no investment by anyone present was commercially feasible. Concerns were also raised about the possibility of conflict of interest. Mr. Eyton met the next day with Mr. Rowe and, according to his diary, Mrs. Stevens to inform them of the results of the meeting — that nothing could be done for York Centre. Mr. Eyton offered to have Hees assist York Centre to liquidate its holdings. Miss Walker's diaries refer to both August meetings and record those attending the August 7 meeting on financing York Centre and Mr. Eyton's offer the next day to assist in liquidation.

This meeting marked the end of Mr. Eyton's contacts with York Centre except for two meetings with Mr. Rowe in the fall of 1985. At these meetings he again advised Mr. Rowe that he should consider liquidation of the company.

Mr. Stevens' Knowledge of Mr. Eyton's Efforts

Any finding of a real conflict of interest on the part of Mr. Stevens arising from the efforts of Mr. Eyton to assist York Centre is dependent on Mr. Stevens' knowledge of those efforts. Mr. Stevens admitted that he suggested Mr. Eyton to Mr. Davies as someone to contact about financing York Centre: "The main thing that I anticipated in suggesting to Jim Davies that he get in touch with Mr. Eyton was advice" (Transcript, vol. 74, pp. 12,879–80). Despite his anticipation that Mr. Eyton would be contacted, Mr. Stevens denied any knowledge of York Centre's approach to Mr. Eyton or Mr. Eyton's subsequent activities on behalf of York Centre.

However, Miss Walker admitted that the information in a list in her diary, containing an item about Mr. Eyton and York Centre financing, was intended to be conveyed to Mr. Stevens. The item in December 1984 reads: "NO EYTON LETTER — WALT. HEES ATTITUDE" (BB–8–23). An entry a few days earlier on December 26 is headed "Letter to SMS" (BB–8–5) and begins "Trevor Eyton called Wed to explain attitude on 3 things we are in."

Miss Walker agreed that the information on another list in her diary headed "Jan 9/85 SMS" (BB–8–73–75) would have been conveyed to Mr. Stevens in a telephone call, except for item 8 on the list which reads in part:

⑧	Ted — Walt Eyton Fla.	showed deal to Rick Drayton

(BB–8–74)

Curiously, Mr. Stevens testified that Mr. Drayton was one of the other names that he gave to Mr. Davies at the time he suggested Mr. Eyton. Mr. Rowe testified that he had shown the Richardson Greenshields proposal to Mr. Drayton and may have discussed this with Miss Walker. I have rejected the explanation of both Miss Walker and Mr. Stevens that such information would not have been of interest to Mr. Stevens. I conclude here as well that all of the items on the January 9, 1985, list were conveyed to Mr. Stevens, including the Walt, Eyton, and Drayton item.

Miss Walker recorded numerous other details about the continuing activities of Mr. Eyton on behalf of York Centre, including references connecting Mr. Eyton and Mr. Keenan, meetings between Mr. Eyton and Mrs. Stevens, Mr. Rowe, and Ms. Bennett, and meetings between Mr. Eyton and certain Bay Street financial institutions.

Miss Walker herself did not attend these meetings or have any direct involvement in soliciting money for the companies. I find that these entries were made in large measure for the purpose of passing on the information in them to Mr. Stevens. I find that Miss Walker kept Mr. Stevens informed about Mr. Eyton's continuing efforts on behalf of York Centre.

Noranda's Interest in Eldorado: the "Change in Policy"

The second aspect of the conflict allegation relating to Brascan and CDIC assets grew out of the efforts of Mr. Eyton described above and a line of evidence explored by Commission counsel that suggested a reversal on the part of Mr. Stevens of a policy pronouncement of November 1984 that prohibited Brascan-related companies from bidding on CDIC assets. This alleged change of policy was said to have allowed the Brascan-controlled mining company, Noranda, to develop a strong interest in certain CDIC assets and in the acquisition of all or part of Eldorado.

The evidence is clear that Noranda had a long-standing interest in merging its Horn mine operations with those of CDC subsidiary Kidd Creek through a joint venture. Indeed, it participated in the CDC share sale to further this interest. This interest in CDC is described in more detail later in this chapter.

Prior to the present government taking office, a number of Noranda executives, and in particular Mr. Ozzie Hinds, were also interested in obtaining the mining assets of Eldorado through a consortium that would acquire the company. Noranda signed agreements with CDIC to obtain confidential information on Eldorado in November 1984 and May 1985 and continued to evaluate the company's assets through the summer and fall of 1985. Late in 1985, Mr. Hinds' interest in the company widened to include a valuation of its refining assets in order to assess the possibility of the complete acquisition of Eldorado.

Mr. Adam Zimmerman, Noranda's president and Mr. Hinds' superior, was sceptical, however, about the possibility that a commercially feasible deal could be struck. The company's chairman, Mr. Alfred Powis, testified that he had an open mind on both these issues and was not averse to Mr. Hinds' trying to determine whether a deal could be done with little capital outlay. The use of a consortium was considered desirable, because Noranda at the time was seeking to reduce its debt load, having gone through a period of losses. As things turned out, the matter never became material enough to be placed before Noranda's board. Nonetheless, Noranda continued to express an interest in participating in the acquisition of Eldorado from the fall of 1984 through to 1986 and the hearings in this Inquiry.

The question of whether Mr. Stevens exercised a public duty or responsibility in regard to Noranda's interest in Eldorado arose in the context of a "policy" said to have been enunciated by him. The "policy" pronouncement at issue was rooted in the fact that four "Brascan" directors had been appointed to the CDIC. Following the public announcements of the appointments in early November 1984, Mr. Stevens had been quoted by the media as follows: "It goes without question that Brascan, who are the advisers to us through ... Trevor Eyton and Mr. Marshall, would not be proposing to bid for the assets that we have under consideration" (Exhibit 122, p. 76). Another news article written around the time of the announcement noted that a "spokesman in Mr. Stevens' office confirmed that the Brascan group would not be allowed to bid for any of the assets" (Exhibit 122, p. 77). Mr. Stevens also confirmed in his testimony that he had "told reporters they can 'take it for granted' that any of the companies owned by the Bronfmans or associated with Marshall won't be bidding for any CDIC assets" (Transcript, vol. 69, pp. 11,976–77).

Mr. Stevens appeared to qualify that answer when he noted that "the statement ... was certainly true in the general sense of stating any suggestion that a big asset or a whole company or something like that would be dropped in the lap of Brascan" and that "any suggestion ... that Teleglobe would be sold to Brascan or a company ... a hundred per cent owned by Brascan ... would be difficult to justify" (Transcript, vol. 69, pp. 11,979, 11,977).

However, Mr. Teschke testified that

> at ... one discussion with the Minister ... it was mutually agreed that one of the downsides of having the Brascan group represented on the Board is that it would take them out of the bidding for any one of those corporations that they might otherwise have been interested in.
>
> (Transcript, vol. 40, p. 6978)

According to Mr. Teschke, he and Mr. Stevens were thinking about Brascan's being able to bid on firms such as Canadair, de Havilland, Teleglobe, and Eldorado. It was his impression, based on the conversation with Mr. Stevens, that the prohibition on bidding "included any of the associated companies with Brascan." He was "99 per cent certain" that this policy or position had been raised with Mr. Marshall or Mr.

Eyton at the time (Transcript, vol. 40, p. 6982–3). Neither Mr. Marshall nor Mr. Eyton confirmed this in their testimony, but both agreed they had been aware of press reports on the issue.

I am satisfied that, in response to reporters' questions, Mr. Stevens made the remarks which he confirmed in his testimony. Further, I have no doubt that these statements were government policy. They were consistent with the discussions between Mr. Stevens and his deputy minister on a subject that lay within the minister's responsibilities. Further, his cabinet colleagues later raised concerns about the CDC share sale that were consistent with the statements being a policy that was in effect.

However, the evidence is clear that CDIC never considered the policy to be something which would forestall mere expressions of interest in CDIC assets by "Brascan" companies. Mr. Marshall testified to this and the record shows that four weeks after the pronouncement, Noranda signed a confidentiality agreement with CDIC to obtain information on Eldorado and, further, that Mr. Marshall was aware of this. Mr. Eyton too did not feel any such prohibition was in place. Furthermore, Mr. Powis of Noranda testified to having a brief conversation with Mr. Eyton about Noranda's interest in Eldorado and Kidd Creek at the time of Mr. Stevens' statements to the media and being told that, in Mr. Eyton's opinion, the minister's statements did not apply to Noranda. Mr. Eyton could not recall discussing the ambit of the prohibition, but merely that the matter could be dealt with later should a serious interest develop.

Further, the evidence shows that Noranda was encouraged to pursue its interest by Burns Fry, which had been retained by CDIC to work on the divestiture of Eldorado. Burns Fry was concerned that every lead be pursued and no one be discouraged from looking at Eldorado, including Noranda. According to the evidence of Mr. John MacNaughton and Mr. Rob Callander of Burns Fry, if and when Noranda's interest developed and an actual "bid" was being proposed, the questions of appropriateness of the bid and any conflict of interest would be addressed and resolved. Mr. MacNaughton and Mr. Callander also testified that they routinely kept Mr. Stevens informed of the developments with regard to Eldorado and in particular of Noranda's interest in it. Mr. MacNaughton described his conversations with Mr. Stevens in this regard as follows:

> I had some conversations with Mr. Stevens on that topic, and his position was that he thought we should advance the interests of all parties and that, as we got closer to a decision, which, I think it would be fair to say, we are still some distance from, judgments on the acceptability of Noranda or any other party would be made at that time.
>
> I think he was sensitive to the potential for criticism that might flow from Noranda being an acquiror of Eldorado, and he took the approach that he would deal with that at the time in the event they became a more committed party.
>
> (Transcript, vol. 46, p. 8314)

As things turned out, however, Noranda's interest in Eldorado, which in fact predated the appointment of Mr. Stevens, never went beyond mere interest. Whatever information Noranda was able to receive with regard to Eldorado, it received pursuant to normal confidentiality agreements that would have been readily available to any interested third party. Noranda's interest thus never approached anything like a bid.

Although Mr. Stevens knew about Mr. Eyton's continuing involvement in York Centre's search for financing, and even if it could be shown that Mr. Stevens' acquiescence to Noranda's interest in Eldorado was somehow connected to Mr. Eyton and the York Centre financing (a connection that was not developed in the evidence), I would nonetheless conclude that there was no exercise of any public duty or responsibility on the part of Mr. Stevens vis-à-vis Noranda and Eldorado that involved a conflict of interest. There simply was no modification or "reversal" of the November 1984 policy pronouncement. The reasons for this finding are as follows.

Mr. Marshall suggested in his evidence that the Ministerial Task Force on Privatization or certain members of cabinet had decided shortly after May 15, 1985, that companies related to CDIC directors would not be prevented in principle from bidding on CDIC assets and that the traditional private sector rules regarding conflict of interest would be sufficient if a CDIC director was also associated with the bidding company. According to normal private sector rules, in such cases the director would declare his or her conflict, not take part in any discussion, and abstain from voting. Mr. Marshall believed that either Mr. Teschke or Mr. Stevens had communicated this general policy to him shortly after he had written a memorandum on May 15, 1985, raising concerns about not only the upcoming CDC share sale, but also CDIC assets generally.

Although Mr. Marshall's testimony was no doubt honestly given, the matter of a May 1985 cabinet-related decision allowing private sector rules to prevail (and thus obviously changing the November 1984 policy pronouncement of Mr. Stevens) was not pursued by counsel. Neither Mr. Teschke nor Mr. Stevens was asked to explain whether such a general policy decision had been taken. Mr. Stevens' testimony with regard to Mr. Marshall's May 15, 1985, memorandum suggested that his concern was with regard to the upcoming CDC share sale and the need to make clear that companies related to CDIC directors would not be precluded from purchasing CDC shares in a public offering. Nothing in Mr. Stevens' evidence indicated a more general cabinet-level decision regarding bidding on CDIC assets by companies connected to CDIC directors, and, as noted earlier, the question was not pursued by counsel. I thus conclude that there is insufficient evidence for me to find that Mr. Stevens participated in such a cabinet-level decision that effectively established a private sector conflicts policy for bidding on CDIC assets, a policy that also had the effect of reversing Mr. Stevens' earlier policy pronouncement of November 1984.

In the circumstances, I conclude that the allegation of a policy "reversal" that effectively resulted in greater access for or advantage to Brascan-related companies vis-à-vis CDIC assets was not made out on the evidence.

Findings Regarding Conflict of Interest

I have found that Mr. Stevens exercised a public duty or responsibility in the appointment of Mr. Trevor Eyton as a CDIC director. He exercised this duty at or about the time he knew and indeed planned that approaches with regard to York Centre and its need for financing would be made to Mr. Eyton in his capacity as an influential CEO and member of the Toronto financial community. The latter was a private interest that was clearly sufficient to influence the exercise of the public duty or responsibility relating to the CDIC appointments. Mr. Stevens was thus in a position of conflict of interest in the appointment of Mr. Trevor Eyton. The conflict of interest on the part of Mr. Stevens began to materialize as soon as he advised Mr. Davies to contact Mr. Eyton on the York Centre financing, knowing that he would shortly be recommending Mr. Eyton's name for appointment to a public office.

It is important to emphasize that the conflict of interest was Mr. Stevens', not Mr. Eyton's. Mr. Eyton was clearly well qualified for the CDIC position.

Award of Contracts to Burns Fry and Dominion Securities

In November 1984 as a result of the announcement of the government's privatization plans, CDIC began to receive numerous proposals from brokerage firms and other financial institutions seeking either to purchase the assets to be privatized or to advise on their disposition. Among the firms making such approaches were Richardson Greenshields, Burns Fry, Dominion Securities, and the British merchant banker Morgan Grenfell.

In November and through December 1984 it was unclear to CDIC and Mr. Stevens whether the advisory services of such firms could be useful in privatization. There was some discussion of whether to enlarge CDIC staff to provide in-house analysis and to structure the bidding process or whether to retain private sector advisers such as the firms mentioned above. At the end of December, the matter was still unresolved.

On January 21, 1985, the Divestiture Committee had a dinner meeting with Mr. Stevens in Ottawa. Over dinner the committee members discussed with Mr. Stevens the importance of using financial advisers in the privatization process — a topic they had considered during meetings in December and January — and the role such advisers could play. The following morning the committee met again and decided to retain Burns Fry along with Merrill Lynch Capital Markets and S.G. Warburg & Co. Ltd. for the sale of de Havilland, Canadair, and Eldorado, and Dominion Securities along with Lévesque Beaubien Inc. for the sale of Teleglobe. After the meeting, Mr. Teschke cleared the names with Mr. Stevens and obtained his approval.

Several days later, on January 28 and 29, 1985, both Burns Fry and Dominion Securities were advised that they would be awarded contracts by CDIC to advise on these divestitures, subject to establishing fees. Because of the high profile of the government's privatization program, and these divestitures in particular, the advisory contracts were conditional on Mr. Stevens' approval.

The allegation of conflict of interest regarding these contracts arose because during the week of January 21, 1985, Mr. Eyton telephoned Mr. Jack Lawrence, chairman and chief executive officer of Burns Fry, and Mr. Tony Fell, president and chief executive officer of Dominion Securities, to ask for their help in assisting York Centre with its financing efforts. Mr. Eyton advised Mr. Lawrence that York Centre "had been in the ownership of the Minister" (Transcript, vol. 44, p. 7961). This "raised a couple of questions" for Mr. Lawrence (Transcript, vol. 44, p. 7962).

> MR. LAWRENCE: I was curious as to what the real ownership was and so forth, but what I was requested to do by Mr. Eyton was to look at York Centre and rather than going into the details . . . I undertook to Mr. Eyton that we would look at York Centre.
>
> Q. Was one of the questions that came into your mind any concern, you know down the line concern, about being asked to do this at the same time that you were lobbying the Minister?
>
> MR. LAWRENCE: Well, the coincidence of timing certainly somewhere along the way, either at that time or sometime later, certainly became obvious to us, that is correct.
>
> (Transcript, vol. 44, p. 7963)

After the call from Mr. Eyton, Burns Fry learned that it would receive three CDIC contracts (eventually consolidated into one). When Mr. Lawrence asked Mr. Wil Matthews, a vice-chairman of Burns Fry, to look at the material on York Centre, he indicated that Sinclair Stevens had been involved in the company. The material on York Centre arrived at Burns Fry the same day it learned that it would receive the contracts. A few days later Mr. Rowe called Mr. Matthews and informed him, among other things, that Mr. Stevens' interest in York Centre was in a blind trust and that Noreen Stevens was directly involved with the company.

Mr. Matthews had concerns similar to those of Mr. Lawrence.

> MR. MATTHEWS: I cannot recall exactly what my thoughts were at that time. I think generally in this period we certainly had concerns and thought about the connection.
>
> . . . .

> My recollection of the thought process at that time was that we felt at this stage we were looking at York Centre to see if it was a financeable vehicle. If it had turned out, on investigation, that it was financeable, at that time we would have taken a more serious and rigorous look at whether there was a potential conflict of interest or not.
>
> . . . .
>
> Q. Why did you not simply address the conflict question and terminate it?
>
> MR. MATTHEWS: At that stage, we had been asked by a senior business executive if we would look at York Centre to see if it was financeable and if we could assist them in financing. My chairman had said that we would do so.
>
> . . . .
>
> So, we made the conscious decision to postpone the decision of looking into whether there was really a blind trust and whether it was operational, and all these kinds of things, to a point in time after which we had decided whether it was financeable or not.
>
> (Transcript, vol. 44, pp. 7979, 7983–4)

Mr. Tony Fell of Dominion Securities, which was also lobbying the minister at the time of Mr. Eyton's call, testified that:

> I recognized immediately that call came through that there was a potential here for a significant conflict of interest. . . .
>
> Immediately after that call came through, I had a meeting with the senior partners of the firm. We discussed this. We agreed that there was the potential for a significant conflict down the road.
>
> (Transcript, vol. 46, pp. 8397–98)

After this call, Dominion Securities learned it would receive the contract from CDIC in regard to the sale of Teleglobe.

During February and March, senior executives of the two brokerage houses met with York Centre personnel and considered the feasibility of a York Centre financing. At the same time, both firms began their advisory work for CDIC, although their fees were still being negotiated. The fees were finally settled and approved by the minister by the end of the second week in March and the formal contracts signed on March 29, 1985. The meetings between York Centre and Burns Fry and Dominion Securities continued into March 1985. By the end of March both firms had terminated their efforts on behalf of York Centre and had formally advised York Centre that they did not regard the company as financeable on reasonable terms.

The coincidence of timing in the award of the Burns Fry and Dominion Securities contracts and the telephone call from Trevor Eyton and the approach regarding the York Centre financing is indeed remarkable. The question that I must resolve, however, is whether Mr. Stevens knew of York Centre's approach to Burns Fry and Dominion Securities. Mr. Stevens denied that he did. Although there is no direct evidence that he was aware of these events, the circumstantial evidence is compelling and must be examined with care.

I have found that while he was a minister, Mr. Stevens was fully informed of all important management and financial matters relating to York Centre and remained actively involved in many key financial and managerial decisions relating to the York Centre group of companies. I have found that Mr. Stevens was aware of York Centre's urgent need for financing. I have also found that Mr. Stevens was aware of Mr. Eyton's continuing efforts on behalf of York Centre, indeed that to a large extent Mr. Stevens was instrumental in their initiation.

In considering Mr. Stevens' knowledge of Mr. Eyton's telephone call to Mr. Lawrence and Mr. Fell, I intend to examine the circumstance of the coincidence of timing of the call and of the events that followed. In doing so, I intend to make reference to entries in Miss Walker's diary. I wish to make it clear that I am not finding that each such entry relates to a discrete conversation with Mr. Stevens. I am satisfied, however, that Miss Walker conveyed information about York Centre to Mr. Stevens and did so, whenever appropriate, at or near the time that such an entry was made. I thus find that the diary entries are helpful in determining the type and the timing of the knowledge that Mr. Stevens had of these events.

Mr. Eyton testified that he had no doubt that his calls the week of January 21, 1985, to Mr. Lawrence and Mr. Fell concerning York Centre "would have been as a result of a further contact from Ted Rowe" (Transcript, vol. 50, p. 9197). The evidence does not establish when this contact between Mr. Rowe and Mr. Eyton took place or the precise date on which Mr. Eyton made the calls, other than that it was immediately prior to the firms' learning of the award of the contracts, that is, prior to January 28 and 29.

On January 30, 1985, Miss Walker made the following two entries in her diary:

> Ted J. Lawrence — package
> Underwriting Dept.
>
> (BB-9-29)
>
> Will Matthews
> Burns
> 11 a.m.
>
> (BB-9-32)

Miss Walker testified that these entries related to Burns Fry and the York Centre financing. It is a reasonable inference that the first entry refers to the material on York Centre that Mr. Casgrain of Hees had sent to Burns Fry two days earlier. The second entry shows that early on Miss Walker knew who York Centre's contact at Burns Fry would be.

On January 31, 1985, Mr. Rowe called Mr. Matthews of Burns Fry, who made two pages of notes on their lengthy conversation. The notes include the following:

York Centre 31/1/85
Ted Rowe

— Have worked with Rich/Greenshields — now out
— Hees — problems of compromise
    — S. Stevens past president
    — Brascan's involvement in Ottawa
    — Tim Casgrain/Trevor Eyton

— Help package and market

— DSP —
    — prefers to work with BFL than DSP
    — past pres — closer to BFL
    — BFL take lead

. . . .

— Need money as quickly as possible
— Spent a lot of time with Hees people—

(Exhibit 142, p. 19)

Mr. Matthews testified that the notes represent Mr. Rowe's observations, which he was simply recording. Mr. Rowe told him that York Centre had worked with Richardson Greenshields but was no longer working with it. Mr. Matthews assumed that the reference to Hees and "problems of compromise" meant that Hees was sensitive to its connection with Mr. Eyton and his presence on the CDIC board, which meant that "they really could not work any further on the York Centre financing possibility" (Transcript, vol. 44, p. 7970–71). Mr. Rowe, who testified prior to Mr. Matthews, said that neither Hees' personnel nor Mr. Eyton had raised this problem and that it was he who had presumed that the appearance of conflict of interest was part of the reason Hees was no longer involved. Mr. Rowe conceded it was possible he told Mr. Matthews that Mr. Stevens was closer to Burns Fry than Dominion Securities, but he said "I do not know why I would have" (Transcript, vol. 22, p. 3603). Mr. Matthews testified that the "closer to BFL" observation was Mr. Rowe's.

The call ended on the basis that Mr. Rowe would send more information and let Mr. Matthews know how Burns Fry's efforts would "dovetail" with Dominion Securities (Transcript, vol. 44, p. 7981).

Miss Walker was aware that Jim Davie was handling the file for Dominion Securities. On February 5, 1985, she noted:

Burns *
Mil
DSP *
Jim Davie

(BB-9-54)

Mr. Fell assigned the York Centre file to Mr. Jim Davie, a vice-president and director of Dominion Securities. On the same day as the diary entry, Mr. Rowe called Mr. Matthews informing him that Burns Fry would have the lead position on the York Centre financing and that he would be working with Mr. Davie of Dominion Securities.

On February 6, 1985, Burns Fry wrote to Mr. Marshall of CDIC with a proposal for its fees on the divestiture contracts. The fees that would be paid by the government to Burns Fry and Dominion Securities was a matter that required Mr. Stevens' approval. As Mr. Teschke testified, because "the appointment of the advisors themselves, but particularly the fees, could be politically sensitive," the engagement of the advisers was made conditional on the minister's approval (Transcript, vol. 40, p. 7061). Burns Fry proposed a work fee of $100,000 per month and a transaction fee of $3 million for each of the three transactions. Burns Fry would receive 40 percent of the total fee, and Merrill Lynch and S.G. Warburg would divide the remainder.

On February 7, 1985, Mr. Rowe sent Mr. Matthews more information and confirmed that he wanted him to meet with Mr. Davie as soon as possible. On February 13, 1985, Mr. Matthews and Mr. Davie met and then together met with Mr. Rowe at York Centre. Miss Walker was aware of the meeting. She noted in her diary for that day:

> Ted
> 4 pm
> DSP—Burns
>
> (BB-9-78)

Mr. Matthews testified that at the meeting he had a list of items for Mr. Rowe to produce and discuss, and that he received the names of the people in the various York Centre subsidiaries to whom he should talk.

During the next two weeks both Burns Fry and Dominion Securities reviewed the York Centre financing proposal and had at least two further meetings with York Centre personnel. Mrs. Stevens attended one of the meetings at York Centre's offices when both Mr. Matthews and Mr. Davie were present. She testified that she found nothing unusual about two senior people from two independent brokerage firms meeting in the York Centre offices. Members of both firms were clear in their testimony, however, that they would not have looked at the York Centre proposal except for the request from Mr. Eyton.

On February 27, 1985, Burns Fry made a presentation to the Divestiture Committee at the request of Mr. Marshall, who indicated that its initial proposal regarding fees was not acceptable. Dominion Securities also made a presentation. CDIC made a counterproposal and the fee discussions continued.

On February 28, 1985, Mr. Matthews and Mr. Davie met and agreed that York Centre was not financeable on reasonable terms. On March 1, 1985, they both met with Mr. Rowe to present the results of their work on York Centre and to see whether he could account for differences between York Centre's and the brokers' valuations of its assets. They met again on March 3, when Mr. Rowe attempted to persuade them that they had undervalued the oil and gas assets.

On March 6, 1985, Mr. Roland Wagg of CIBC wrote that "Mr. Rowe again advises he continues to meet jointly with Dominion and Burns Fry and is still optimistic that investors will be forthcoming. He does however acknowledge that March 31 would probably be the ultimate deadline" (Exhibit 109, pp. 62–63). According to Mr. Wagg's testimony, this meant that if the shares were not placed by March 31 the effort would be at a dead end.

On March 7, 1985, the Divestiture Committee of the CDIC passed a unanimous formal resolution that the contracts be awarded, subject to the approval of the minister and final fee negotiations. On March 11 and 12, respectively, Dominion Securities and Burns Fry sent signed draft contracts to CDIC. On March 15, 1985, Mr. Paul Brown reported to Mr. Stevens on the negotiated fee structure for both companies. The memorandum accurately summarized the fees as follows:

> 2. The fees (to be divided between the three brokers) on the Burns Fry deal are:
>   (i) $300,000 per month for at least 6 months (work fees);
>   (ii) $1.5 million on closing the first deal; $2.0 million on closing the second deal; $3.0 million on closing the third deal;
>   (transaction fees)
>   (iii) work fees in excess of $600,000 on a particular privatization will be reduced from the transaction fee on the privatization.
>   (iv) out of pocket expenses (based upon what I have seen thus far, this could get expensive and embarrassing).
>
> 3. The fees on the Dominion Securities deal are:
>   (i) $60,000 per month for at least five months;
>   (ii) 1/4% of 1% of the lesser of book value at date of sale and $250 million plus 1% on the remainder of the sale price;
>   (iii) reasonable out of pocket expenses.
>
> (Exhibit 142, p. 73)

Dominion Securities was to share its fee with Lévesque Beaubien.

On March 25, 1985, Miss Walker recorded the following in her diary:

> Matthews secty Burns
> put together & call HP
> for pickup.
>
> DSP. Jim Davey
> will send over this aft.
>
> (BB–11–78)

Miss Walker testified that this entry referred to Burns Fry's and Dominion Securities' returning the financial packages they had received on York Centre. Mr. Matthews testified that he spoke to Mr. Rowe on this day and informed him that there was "no magic we could perform" (Transcript, vol. 44, p. 8025). On March 27, 1985, Burns Fry returned clean copies of its York Centre material.

On March 28, 1985, the final contracts between CDIC and Burns Fry and Dominion Securities were executed. The contracts covered work begun in early February.

As can be seen, the coincidence of timing regarding both firms continued throughout February and March. The evidence establishes that the approaches on the private side began with Mr. Rowe's approach to Mr. Eyton and Mr. Rowe's subsequent approaches to both firms. The evidence also establishes that both Miss Walker and Mrs. Stevens were aware of these approaches. It is worth noting that although CIBC put little credence in Mr. Rowe's financing ideas, the approach to Burns Fry and Dominion Securities was mentioned to the bank, at a time when the bank was demanding lists of cheques for prior approval and additional security for its loans. Clearly, York Centre regarded the approaches to Burns Fry and Dominion Securities as a possible solution to its problems. In other words, I have no doubt that the fact that two highly reputable brokerage firms were, over a two-month period, ostensibly considering a York Centre financing was a matter of some discussion among persons associated with the York Centre group. Most of the York Centre group executives had made presentations in their areas of expertise to senior executives of these firms. That both firms were considering a York Centre financing was a significant event. Potentially, such a financing could have had life-saving implications for the York Centre group.

Based on Mr. Stevens' knowledge of York Centre affairs while he was a minister, the importance of a Burns Fry or Dominion Securities financing for York Centre, and the evidence of knowledge of both Miss Walker and Mrs. Stevens, I find that Mr. Stevens was aware of the approaches to Burns Fry and Dominion Securities as they were continuing.

Mr. Stevens testified that, although he was not directly involved with the negotiation of the fees, "I would generally be asked for a final approval. Paul Marshall would sometimes phone, I think, wanting me to be a bit negative so that he could go back and try to get them down lower" (Transcript, vol. 69, p. 11,963). Based on this evidence and Mr. Teschke's testimony that Mr. Stevens approved these contracts, and based on Mr. Brown's memo, I find that Mr. Stevens approved the contracts and fees for Burns Fry and Dominion Securities, and that in so doing he exercised a public duty and responsibility.

Findings Regarding Conflict of Interest

I find that Mr. Stevens had knowledge of a private economic interest that was sufficient to influence the exercise of these public duties and responsibilities. As the minister responsible for CDIC, he approved the award of government consulting contracts and the fees to be paid to Burns Fry and Dominion Securities while knowing that York Centre was meeting with the same two firms in its search for financing. I thus find that Mr. Stevens was in a position of real conflict of interest when he exercised his public duties and responsibilities and approved the contracts and fees to Burns Fry and Dominion Securities.

Here again, I emphasize that the conflict of interest was Mr. Stevens', not Burns Fry's or Dominion Securities'. I do not suggest that there was anything improper or untoward in the award by CDIC of the advisory contracts to Burns Fry or to Dominion Securities, or in the fees paid.

Award of the Contract to Gordon Capital

During February and March 1985 progress was made towards privatization of CDC, in particular, with regard to the sale of the federal government's shareholdings in CDC. The market price of the CDC shares was rising. In late March and early April the share price surpassed the government's original cost price and interest in the sale of the government's holding, both in the government and the brokerage community, became active.

On April 15, 1985, the CDIC Divestiture Committee concluded that the sale of the government's shares in CDC should go forward. In a letter to Mr. Stevens after this meeting, Mr. Marshall set out a number of alternatives and recommended sale of the shares, with large blocks being sold to two or three major buyers. A number of brokerage firms made proposals on how to structure the sale, among them Burns Fry, which actively sought appointment as lead underwriter.

On a Saturday morning in late April or early May, Mr. Stevens telephoned Ms. Jo Bennett at home to ask if Gordon Capital, in which she was a partner and director, would be interested in advising the government on the structure and pricing of the CDC share sale. A meeting was arranged for the following day at the Stevens farm. On Sunday afternoon Ms. Bennett accompanied Mr. Jim (Jimmy) Connacher and Mr. Peter Hyland of Gordon Capital to the farm where they met with Mr. Stevens and discussed Gordon Capital's role in the share sale and the fee it would be paid. A meeting in Ottawa followed. Mr. Stevens called Mr. Connacher a few days later and told him that Gordon Capital had the contract.

The Divestiture Committee met on May 13, 1985, and formally recommended that Burns Fry be engaged as lead underwriter for the CDC share sale and that Gordon Capital be retained as an independent adviser to the government. Gordon Capital's fee was $500,000.

The allegation of conflict of interest in regard to the Gordon Capital contract arose because Ms. Jo Bennett was at the same time working on York Centre's search for financing. Ms. Bennett had first become involved when Mr. Peter Cole of CIBC referred York Centre to Gordon Capital. She had previously worked with Mr. Stevens on the formation of Royal Cougar and had known Mrs. Stevens for five or six years. Ms. Bennett's efforts to find financing for York Centre began in late February or early March and continued into the summer of 1985.

Over this period Ms. Bennett met frequently with both Mrs. Stevens and Mr. Rowe. During the month of March, Ms. Bennett developed a financing proposal that she believed was possible if a third party investor could be found. By the end of April or early May, Ms. Bennett had approached Mr. Eyton to see if Brascan would be interested in becoming the third party investor. Ms. Bennett believed that this was a natural investment for Brascan through either Westmin or Norcen Energy. Other avenues were also being explored. It was at this very same time, late April or early May, that Mr. Stevens telephoned Ms. Bennett at her home to ask if Gordon Capital would be interested in advising the federal government on the CDC share sale. I will return to the services Gordon Capital provided in the section on the CDC share sale. My concern here is the award of the contract to Gordon Capital.

It is readily apparent that Mr. Stevens exercised a public duty or responsibility in this award. It was his decision to retain Gordon Capital. It is also clear that Ms. Bennett's efforts at that very time to find money for York Centre were sufficient to influence Mr. Stevens' exercise of his ministerial power to retain Gordon Capital. The question that I must determine is whether Mr. Stevens was aware of Ms. Bennett's efforts on behalf of York Centre. Mr. Stevens denied that he was.

As with the York Centre approaches to Burns Fry and Dominion Securities, Miss Walker made frequent references in her diaries to Ms. Bennett and to Ms. Bennett's meetings with Mrs. Stevens, Mr. Rowe, and Mr. Eyton, occasionally including brief comments about the various financing proposals. One such entry deserves comment. On April 11, 1985, she made a list of three items headed "SMS," meaning Mr. Stevens. (Miss Walker admitted in regard to other such lists that she intended to convey the information to Mr. Stevens.) The list begins as follows:

> Apr 11
> SMS
>
> ① Rowe — Jo Bennett
> mtg Wed 11 am
> Ted back Sat evg
> to Ott Mon.
>
> (BB-12-98)

The meeting referred to — "mtg Wed 11 am" — concerned York Centre financing and took place on Wednesday, April 17, 1985. The date and time of the meeting were confirmed by Ms. Bennett based on her diary.

I have already found earlier in this report that this list was intended to be conveyed to Mr. Stevens. I am thus satisfied that some time in April, Miss Walker and Mr. Stevens were discussing Gordon Capital's and Ms. Bennett's efforts on behalf of York Centre. Indeed I find that Mr. Stevens was aware of Gordon Capital's efforts throughout, either from Miss Walker or Mrs. Stevens, who, as I noted earlier, was having frequent meetings with Ms. Bennett.

Findings Regarding Conflict of Interest

I thus find that, at the time that Mr. Stevens telephoned Ms. Bennett to ask if Gordon Capital would advise the government on the CDC share sale, he knew that Ms. Bennett and Gordon Capital were involved in York Centre's search for financing. In approaching Ms. Bennett in this way at this time, therefore, Mr. Stevens was in a position of real conflict of interest.

Here again, I emphasize that the conflict of interest was Mr. Stevens', not Ms. Bennett's or Gordon Capital's. Ms. Bennett testified that although deeply immersed in meetings on the York Centre financing, she did not raise the matter with her colleagues who were involved in the CDC contract or with Mr. Stevens. Ms. Bennett testified that it was her professional obligation to keep the York Centre financing matter and the CDC retainer separate. I have no reason to doubt this. Nor do I have any reason to suggest that there was any impropriety in retaining Gordon Capital as a financial adviser to the federal government on the CDC share sale. The evidence is clear that Gordon Capital was qualified to serve in this capacity.

The CDC Share Sale

The sale of the government's CDC shareholdings and, in particular, Mr. Stevens' involvement as the responsible minister attracted numerous allegations of conflict of interest both in the media and the House of Commons.

The main allegation was that Mr. Stevens, as minister responsible for CDIC and thus directly responsible for the sale of the federal government's holdings in CDC, helped to engineer the CDC share sale so as to benefit or favour Brascan-related interests. The allegation is stated in various ways but can be reduced to two basic accusations: first, that Brascan wanted to obtain control of CDC so they could "cherry pick" its best assets, especially Kidd Creek; secondly, that Mr. Stevens as minister responsible for CDIC accommodated Brascan's interest by allowing Noranda to become a large block buyer of the CDC shares, approving CDC share sale legislation that favoured the Brascan group of companies, and agreeing to Gordon Capital's suggested pricing for the share issue (all elements of a "CDC takeover theory").

I have already described the federal government's shareholdings in CDC and the nature of the CDC holdings themselves (see figure 4.3). The federal government owned approximately 48 percent of the issued shares of CDC. The shares were originally purchased at a cost of $10.48 per share. When the CDC share price climbed to $12.50 in the spring of 1985, the federal government decided to sell by way of secondary offering all but the 10 percent that it was required by law to retain.

This sale of the federal government's shareholdings in CDC was publicly announced on May 29, 1985. To allow for the sale, Bill C-66, the Canada Development Corporation Reorganization Act, was drafted.

A preliminary prospectus was filed on July 21, 1985. The issue was priced at $11.50 at a pricing meeting held on the evening of August 20, 1985, and its sale to the public at large began shortly thereafter. For a number of reasons which included the fact that Bill C-66 had not been passed, the sale was by "instalment receipts" (rather than shares), entitling purchasers to receive the CDC shares after paying for them in two instalments, one at the time of the sale and the other a year later. Although Bill C-66 received first reading on June 27, 1985, a clause-by-clause analysis before a House of Commons legislative committee took place in September and October — after the sale — and the bill received royal assent on December 20, 1985.

The theory explored with the witnesses was that Mr. Stevens actively accommodated Noranda's interest in the acquisition of Kidd Creek and made a number of key ministerial decisions favouring Noranda and Brascan-related companies to encourage those companies to assist in the financing of York Centre. According to this "CDC takeover theory," Mr. Stevens' approval of Noranda as a large block buyer of the CDC instalment receipts provided Noranda with a significant advantage in its desire to take over CDC and, in particular, in its effort to acquire Kidd Creek; Mr. Stevens' selection of a 50 percent control test for the definition of "associate" in the CDC Reorganization Act, rather than the 10 percent test that was suggested by CDC, allowed Brascan-controlled affiliates to acquire more shares of CDC than would have been the case otherwise; and Mr. Stevens' decision to accept Gordon Capital's aggressive pricing recommendation at the August 20, 1985, meeting disregarded Gordon Capital's activity in the market that very day and permitted the higher pricing to "knock shares loose" for still additional purchases by either Noranda or other Brascan-related companies.

These allegations were thoroughly canvassed in the evidence. Some 15 witnesses were called to give evidence on the CDC share sale and 23 exhibits were filed, some with lengthy compilations of hundreds of documents. The "CDC takeover theory" was explored exhaustively. I am satisfied that no stone was left unturned. I am also pleased to note that in their written argument at the conclusion of the public hearing phase of the Inquiry, Commission counsel submitted that none of the allegations relating to the CDC share sale as set out above could be substantiated on the evidence. Commission counsel urged that I reject all of the allegations of impropriety or conflict of interest on the part of Mr. Stevens in his handling of the CDC share sale and, further, that I find that all of the institutions and individuals, whether government or private sector, who were involved in the CDC share sale conducted themselves properly. I fully agree and I so find.

However, because so many allegations of misconduct have been levelled at various individuals and institutions involved in the CDC share sale, it is essential that I set out my findings clearly and in some detail so that any reputations that have been damaged unfairly in the process may be restored as far as is possible at this late stage.

Noranda as Block Buyer

The Commission heard evidence from a number of witnesses about how Noranda became the only block buyer of CDC instalment receipts in August 1985. Mr. Bill Teschke testified that the need for a sponsoring shareholder or "block buyer" in a public sale of the government's CDC shareholdings was an idea that had been discussed by the CDIC directors for years and that it pre-dated Mr. Stevens. Mr. Teschke explained the importance of having a sponsoring shareholder:

> The concern was that, without a sponsoring shareholder who would be able to hold the management of CDC accountable, there would be some risk that, should an economic downturn or other events occur after the secondary offering of shares had been completed and if those share values then fell, the government could be in a politically difficult situation if there was not a sponsoring shareholder. If there was a sponsoring shareholder, there was some feeling that that sponsoring shareholder, to begin with, would be a sophisticated investor and would know what it was getting into and could shoulder the responsibility from that point on, whereas the government would not be required to do so.
>
> (Transcript, vol. 43, pp. 7626–27)

The CDIC Divestiture Committee discussed the idea of a "sponsoring shareholder" at a meeting on April 15, 1985. The decision to sell off most of the federal government's holdings in CDC had already been made and the committee felt that a sponsor or large block buyer would provide better financial control and accountability in CDC. The discussion, however, was general in nature and no particular names were suggested.

In May 1985 the Ministerial Task Force on Privatization voiced a concern about companies associated with CDIC directors purchasing the CDC shares. On May 13, 1985, this matter was discussed at a meeting of the CDIC Divestiture Committee, in particular whether or not companies associated with CDIC directors would be prevented from becoming sponsoring shareholders in the CDC share sale. The CDIC directors were concerned with the implications for the sale. Mr. Eyton testified that to have excluded all companies in any way related to CDIC directors from acquiring CDC shares would not only have reduced the available market and thus prejudiced the sale, but would have been unfair to many minority shareholders of those companies, as well as the many companies only loosely part of a conglomerate. Further, if such an exclusion were in force, it was thought, some valued members of the CDIC board might prefer to resign rather than submit to what they regarded as an inappropriate restraint.

In a memorandum to Mr. Stevens dated May 13, 1985, Mr. Marshall, as president of CDIC, sought a clarification of the conflict of interest rules that were applicable to the CDIC board members. He expressed his concern that "[t]he message received from the Ministerial Task Force meeting was to the effect that no company in any way associated with any Director of CDIC would be a candidate for ownership of the sponsorship block, if any, of CDC shares down the road" (Exhibit 134, p. 118). He urged Mr. Stevens to clarify the situation both with regard to the CDC share sale and with regard to CDIC assets generally. He wrote:

> While I know of no interest on the part of any company associated with any Director of CDIC in any of the companies to be disposed of by CDIC, I do feel that the question of code of ethics should be clarified.
>
> The government has succeeded in attracting a very strong group from the private sector to the CDIC Board. The thought that any company would be precluded from bidding on one of our companies, even though its bid were patently the best bid or conversely, that the Director concerned would be obliged to resign and deprive CDIC of his or her services, would to my mind be a retrograde step.
>
> While as I say I have absolutely no knowledge of any such interest, I do feel that the question of ethics should be dealt with without delay.
>
> (Exhibit 134, pp. 118–19)

According to Mr. Marshall, shortly thereafter he was advised by either Mr. Stevens or Mr. Teschke that normal private sector conflict of interest rules, that is, declaration of interest and abstention from voting, should be followed with regard to CDIC. As I noted earlier, the evidence is not sufficiently clear as to whether or not a cabinet-level decision had been made adopting the private sector conflict of interest procedure for *all* of the CDIC assets, or just for the CDC share sale. The evidence is clear, however, that, at least with regard to the CDC share sale, Mr. Stevens and certain cabinet colleagues decided that companies associated with CDIC directors would not be prevented from purchasing shares in the public market or, indeed, from being one of the sponsoring shareholders or block buyers. Mr. Stevens testified to this effect.

The suggestion that Noranda might be interested in a block purchase originated with Burns Fry. Mr. Jack Lawrence and Mr. Wil Matthews testified that Burns Fry drew up a list of 12 corporations that they thought might be interested in a large block purchase of CDC shares. Noranda was one of the corporations. One of the reasons for placing Noranda on the list was its long-standing and well-known interest in the Kidd Creek mine.

As things turned out, Noranda was the only corporation on the list that expressed an interest in purchasing a block of CDC receipts. Initially, Noranda wanted to acquire no more than 4 million receipts. However, given the absence of any other sponsoring candidate and encouraged by Burns Fry, Noranda agreed to increase its purchase to 6.5 million receipts.

Mr. Powis testified that he hoped that the ownership of a large block of shares could be used as a "bargaining chip" with Mr. Anthony (Tony) Hampson, the president of CDC, in Noranda's negotiations with

CDC for a joint venture between the Noranda copper group and Kidd Creek (Transcript, vol. 49, p. 9071). Even though Noranda's motivation for purchasing a block of CDC shares was to "get [Tony Hampson's] attention" (Transcript, vol. 49, p. 9071), the evidence is clear that Noranda's purchase was not part of a concerted effort to take over CDC. The block represented only 10 percent of the voting shares. Noranda could have purchased more receipts had it wished; indeed some 8 million receipts had been set aside for it as the large block buyer. Noranda was content with 6.5 million and a 10 percent position. As Mr. Powis explained in this testimony:

> Q. What kind of portion of the CDC share issue did you think you might need to have a good bargaining chip with Tony Hampson?
>
> A. It would have to be enough, as I said, to get his attention. As far as I was concerned at that point and I put it all in context, our major thrust was reducing debts, not making new investments, so I wanted to keep it as small as I could, consistent as I say with having some kind of a meaningful chip.
>
> (Transcript, vol. 49, p. 9071)

The evidence is also clear that there was no connection between Noranda's decision to purchase a large block of CDC shares and Mr. Eyton and his relationship with Mr. Stevens. Mr. Powis testified that Noranda's decision was made without any consultation with Mr. Eyton or Mr. Marshall, even though they were on Noranda's board of directors. Mr. Marshall testified that he was surprised to learn of Noranda's decision and that he learned of it from Burns Fry only two weeks before the August 20 pricing meeting. Mr. Eyton testified that he learned of Noranda's purchase of the CDC shares at the actual pricing meeting. Because he was a director of Noranda, he immediately withdrew from the pricing discussions and left the meeting. I accept this evidence.

This brings me to Mr. Stevens' role in these matters. Mr. Lawrence of Burns Fry testified that Noranda's status as a block buyer was "cleared" with Mr. Stevens in late July or early August (Transcript, vol. 45, p. 5253). Indications in Miss Walker's diary suggest that Mr. Stevens' approval was given on or about August 8, 1985 (SW- 4–144). It was on August 7, 1985, that Mr. Eyton had his final meeting with Messrs. Lawrence, Fell, Clarke, and Baker with regard to the York Centre financing.

I have found that Mr. Stevens remained informed of the York Centre financing initiatives as they were progressing, especially those involving Brascan, Burns Fry, Dominion Securities, and Gordon Capital. I have also found that in all likelihood the details relating to Mr. Eyton's involvement in York Centre's search for financing were communicated to Mr. Stevens in a timely fashion by either Miss Walker or Mrs. Stevens. Nonetheless, I cannot conclude that Mr. Stevens' "approval" of Noranda as block buyer involved a conflict of interest.

Even though Mr. Stevens knew about Mr. Eyton's continuing involvement in York Centre's search for financing, his approval of

Noranda cannot be said to have been the exercise of a public duty or responsibility. The evidence is clear that a cabinet-level decision was made in May 1985 that companies associated with CDIC directors would be eligible to be sponsoring shareholders in the CDC share sale. This was a decision of general application and was taken before Noranda indicated its interest. Mr. Stevens' "approval" of Noranda's interest in early August 1985 was in my view nothing more than the implementation of the general policy decision of May 1985. I thus find that Mr. Stevens' involvement in the approval of Noranda as a block buyer in the circumstances set out above was proper and free from any conflict of interest.

Bill C-66

The Commission also heard extensive evidence about the drafting of Bill C-66, the Canada Development Corporation Reorganization Act. Commission counsel explored the possibility that Bill C-66 was drafted to accommodate a Brascan/Noranda takeover of CDC. Specifically, it was suggested that the definition of "associate" as used for the purpose of enforcing the 25 percent maximum shareholding rule had been "watered-down" to enable several Brascan-related companies acting in concert to acquire control of CDC.

In May 1985 the cabinet approved the conditions of the sale of the CDC shares and the sale was announced. Bill C-66 was drafted in June 1985 in accordance with policy directives from cabinet. The text was approved by cabinet in the ordinary way and the bill's passage proceeded in the ordinary course, which included public hearings in which these allegations were raised.

Mr. Douglas Lewis, a Department of Justice lawyer serving with DRIE, provided a detailed description of how Bill C-66 was drafted. The original idea was to transform CDC into a normal Canada Business Corporations Act (CBCA) company without any restraint on shareholdings. The government decided, however, to limit any one shareholder and its associates to a 25 percent holding of CDC. The two related concepts of "associates" and "control" were chosen after extensive review of similar legislation, particularly the "affiliates" provision of the CBCA, the "associates" provision of the Bank Act, and the predecessor CDC Act. The 50 percent threshold for defining "control" was drawn from the Bank Act and from CBCA provisions dealing with intercorporate financial transactions. The evidence is clear that these definitions were selected by the government draftsmen to complement the established ownership restraints while permitting the emergence of a "sponsoring" shareholding block, in accordance with cabinet policy.

Mr. Stevens' role was critical. He was asked for his decision on these matters at a meeting on June 20, 1985. Mr. Lewis, Mr. Nigel Gray, vice-president and general counsel for CDC, and Mr. Ron Watkins, director of Crown Investments at DRIE, were present. Mr. Stevens listened to both sides. Mr. Lewis and Mr. Watkins explained why they preferred a 50 percent control test and Mr. Gray presented the CDC concerns that a tighter 10 percent test be employed. Mr. Stevens agreed with his department officials that the 50 percent control test for "associate" was more desirable because it would allow more companies to purchase CDC shares and thus facilitate a more successful share sale.

I find that Mr. Stevens' decision was one of general application, and that it was made without reference to either Brascan or Noranda. In fact, the evidence is clear that neither Brascan nor Noranda, or a fear of a Brascan/Noranda takeover of CDC was ever suggested or raised as a possibility in the discussions between DRIE and CDIC on the one hand and CDC on the other. Indeed, on June 20, 1985, when Mr. Stevens decided to accept his departmental officials' recommendation and adopt the 50 percent control test for associates, Noranda itself had not yet expressed any interest in the CDC share sale.

Furthermore, Mr. Tony Hampson, president and chief executive officer of CDC, testified that CDC had been fully consulted on the drafting of Bill C-66, and that, although he had brought his concerns about the definition of "associate" to the attention of Mr. Stevens as the responsible minister and later to a committee of the House of Commons, his purpose in doing so was to obtain a "clarification" of the government's policy. Mr. Hampson denied harbouring any belief during the drafting and eventual enactment of Bill C-66 that inappropriate steps were being taken to the advantage of Brascan or Noranda or, indeed, any other private interest.

In short, none of the witnesses called by Commission counsel and examined extensively on the drafting of Bill C-66 could lend any support to the suggestion that the legislative process of Parliament was somehow subverted to favour Brascan-related interests. Indeed, I find that such was decidedly not the case. There is no evidence of any Brascan or Noranda-related initiative to take over CDC as suggested in the allegations; nor is there any evidence that Bill C-66 was drafted or designed to achieve anything but proper objectives in the public interest.

Pricing Meeting of August 20, 1985

The third element in the "CDC takeover theory" as explored by Commission counsel was the suggestion that Mr. Stevens' involvement in the August 20, 1985, pricing meeting and his decision to accept Gordon Capital's $11.50 per share pricing recommendation somehow furthered an improper effort on the part of Gordon Capital and Brascan/Noranda to "knock shares loose" for additional purchase by Brascan-related companies. The Commission heard extensive evidence in this area as well.

I find for reasons developed in more detail below that here again the allegation of impropriety was wholly without merit. The evidence is clear that although the people at the August 20, 1985, pricing meeting had a heated debate about the appropriate price, the conduct of all of the individuals and institutions that took part, including the decision of

Mr. Stevens to set the price at $11.50, was free from any conflict of interest. There is no basis whatsoever in the evidence for suggesting otherwise. Let me review briefly the key evidence in this area.

In the early evening of August 20, 1985, Mr. Lawrence of Burns Fry and Mr. Connacher of Gordon Capital met with Mr. Marshall and a number of other CDIC directors at the CDIC offices in Toronto to set the price for the secondary offering and thus finalize the prospectus. Because Mr. Stevens was in Vancouver on cabinet matters, a conference call had been scheduled for later in the evening so that the minister could approve the pricing. Burns Fry as lead underwriter was urging a price of $11.25 per share. Gordon Capital thought $11.50 a more appropriate price given both the success of the "road show" and the strong showing in the market that day. The road show involved the solicitation of expressions of interest from brokers and financial institutions across the country and had taken place after the filing of the preliminary prospectus on July 21, 1985. Burns Fry, however, objected strongly to using the market indications from the August 20 trading since Gordon Capital itself had made a large purchase that day on behalf of an unidentified client and the purchase had increased the market price, perhaps artificially.

The various positions were presented to Mr. Stevens in the conference telephone call later that evening. Mr. Marshall advised Mr. Stevens that the CDIC Divestiture Committee agreed with Gordon Capital and was also recommending an $11.50 pricing. Mr. Stevens listened to all the submissions and decided to accept the recommendation of the CDIC Divestiture Committee and the federal government's financial adviser, Gordon Capital, and set the price at $11.50.

As I understood it, the theory explored in this area amounted to this. Noranda was anxious to acquire as many of the CDC shares or instalment receipts as were available. (I note that the evidence set out earlier makes plain that this was not so, but for the purpose of setting out the "allegation" regarding the pricing meeting I will continue.) In its effort to "knock" some of the shares that had been pre-ordered in the road show "loose," Noranda itself, or through Brascan, somehow engineered some artificial market activity on the day of pricing to drive up the share price in an effort to persuade the minister to accept a higher pricing and force one or more institutional buyers to decline their orders, making more shares available for Noranda. The evidence, however, is clear that any suggestion of market manipulation on the part of Noranda, Brascan, or Gordon Capital is without substance. There are a number of related reasons for my so finding.

First, I have already found that Noranda was not anxious to acquire more than the 6.5 million shares that it agreed to purchase, and indeed declined the offer to purchase more. Secondly, even if there was some market manipulation on the day of pricing, the resulting increase in market price would have been contrary to Noranda's interest, since it served to increase the cost of shares to Noranda by over $1.5 million. Thirdly, there was simply no evidence of improper market manipulation by Gordon Capital or any other institution on the day of pricing. Mr. James Kay, chairman of Dylex Corporation, testified that it was his order that Gordon placed in the market on August 20, 1985, but that the order was wholly unsolicited and had absolutely no connection with Noranda or, indeed, with any effort to "knock shares loose." I accept this evidence.

I find, in sum, that there is no evidence to support the allegation that the pricing of the CDC instalment receipts or the market activities on August 20, 1985, furthered or were designed to further Noranda or Brascan-related interests. I find that Mr. Stevens' decision to accept the recommendation of the CDIC Divestiture Committee and to price the shares at $11.50 was thoroughly proper and free from any conflict of interest. Indeed, the $11.50 pricing decision resulted in the federal government's obtaining an additional $5.95 million on the sale of its CDC shareholdings. The "CDC takeover theory" provided the Inquiry with an intriguing but ultimately fruitless review of otherwise proper conduct and activity.

Findings Regarding CDC Share Sale

I can now summarize my findings on the CDC share sale. I find that there is no evidence to support any of the allegations, in whole or in part, that combined to suggest a Brascan-related "takeover" of CDC or Kidd Creek. I find that Mr. Stevens' approval of Noranda as a large block buyer, his selection of a 50 percent control test for "associate" in the drafting of Bill C-66, and his decision to price the CDC instalment receipts at $11.50 per share were proper and free from any conflict of interest, real or apparent.

In the final analysis, the CDC share sale accomplished important governmental objectives in a timely fashion with a significant return to Canadian taxpayers. The allegations of a conspiracy to aid Brascan was made on the basis of incomplete information, and have resulted in what I imagine to be significant damage to the reputations of those involved. To repeat, I find the allegations relating to the CDC share sale and amounting to an accusation that there was a Brascan-related effort to take over CDC, and that Mr. Stevens was improperly involved thereto, to be wholly without merit and contrary to the evidence.

Conclusions Relating to CDIC and Bay Street

My findings with regard to the allegations relating to CDIC and York Centre's search for financing are as follows. I find that Mr. Stevens was in a position of real conflict of interest with regard to his role in:

- the appointment in October 1984 of Mr. Trevor Eyton as a CDIC director;

- the approval in March 1985 of the financial advisory contracts awarded by CDIC to Burns Fry and Dominion Securities; and
- the appointment in late April or early May 1985 of Gordon Capital as a financial adviser to the federal government on the CDC share sale.

I find that with regard to the other allegations relating to "Brascan," and in particular to Mr. Stevens' involvement in a "reversal of policy" affecting Noranda and Eldorado, or to his involvement in the CDC share sale, Mr. Stevens was not in a conflict of interest position.

Chapter 22

The Allegations Relating to Hyundai

The allegations relating to Hyundai and the Hanil Bank may be summarized as follows: Mr. Stevens did not act in the public interest in his governmental dealings with Hyundai but was influenced by his own private political and private business interests. More particularly, it is alleged that Mr. Stevens authorized the forgiveness of a commitment made by Hyundai to the Foreign Investment Review Agency (FIRA) to export certain quantities of goods from Canada and, additionally, that he gave generous federal government assistance to Hyundai to establish an automotive assembly plant in Bromont, Quebec. Mr. Stevens' motivation for such authorization, it is alleged, was to see a Hyundai parts plant established in his riding of York-Peel and to secure favourable consideration for certain companies in the York Centre group having outstanding loans with the Hanil Bank Canada — a subsidiary of a bank with which, it is alleged, Hyundai had a major shareholding relationship.

It should be noted that the allegations contain as an element the suggestion that Mr. Stevens' favourable treatment of Hyundai was motivated not only by considerations involving the potential political benefit that would accrue to him through having the parts plant placed in his own riding, but by his private business interests as well. If the allegation had related only to Mr. Stevens' private political interests, I would have had grave doubts about whether, even if true, such an allegation was an allegation of conflict of interest into which I should inquire and report. This is a complex question that requires a careful assessment of the proper extent to which a minister of the Crown can act to forward his or her own partisan political ends. I do not find it necessary, however, to deal with the question of whether such a political interest, standing alone, would be sufficient to be considered as creating a conflict. It is because this assertion is combined with the allegation that Mr. Stevens was motivated by his private business interests as well that I shall deal with it as an allegation of conflict of interest.

Newmarket Parts Plant

Hyundai decided to open a Canadian automotive parts plant in Newmarket, Ontario, to have a Canadian source for starters and alternators. The town was selected because of its ideal transportation features and its proximity to the proposed location of Hyundai's Canadian head office and other automobile parts manufacturers. Construction of the plant was financed entirely by Hyundai; there was no government assistance.

Although Mr. Stevens met with Mr. Park and Mr. Norman Gibbons of Hyundai in King City in October 1984, there was no discussion at that time of the proposed Hyundai parts plant or its location. The government first received information about the plans on January 29, 1985, when Mr. Alfred Chaiton, a lobbyist for Hyundai, informed DRIE officials of the decision to build a plant and to locate it in Newmarket. The minister's office became aware of the decision on January 31, 1985, when Mr. Stevens' chief of staff informed him that Hyundai intended to announce in Ottawa, on February 4, 1985, the establishment of a parts manufacturing plant near Toronto. The minister was also told that Hyundai had invited him to participate in the announcement, along with other representatives of the federal government as well as those from the provincial and municipal levels. On February 4, 1985, DRIE and Hyundai issued a joint press release announcing the plant.

The decision to build the parts plant in Newmarket was made without any involvement by Mr. Stevens and, further, predated any expression of desire by Hyundai to DRIE either to modify the FIRA commitment or to build a large automobile assembly plant in Canada.

FIRA Commitment and the Memorandum of Understanding

Hyundai Corporation, which had been doing business in Canada since the 1970s, established a new Canadian business in 1983, Hyundai Canada Inc., to carry on business as a general trading company. In consideration for its authorization to do business in Canada, Hyundai Canada gave a number of undertakings to FIRA. The export commitment portion (the FIRA commitment) provided, first, that the value of exports of Canadian goods would equal 50 percent of the value of goods imported into Canada, and, second, that of these exports, 20 percent would be Canada-manufactured. The FIRA commitment itself anticipated that the activities of Hyundai Canada would be those of a general trading company, with exports totalling $45–55 million in the first three years of operation. In 1983 Hyundai Canada's exports totalled approximately $26 million and were, in fact, approximately twice the level of imports in that year.

In 1983 Hyundai Canada incorporated Hyundai Auto Canada Inc. (Hyundai) as its wholly owned subsidiary, and this subsidiary's import and export activities were also to be considered within the FIRA commitment. For 1984, the first full year in which Hyundai automobiles were sold in Canada, initial projections were for sales of 5000 vehicles. In fact, 25,123 vehicles were sold. The unexpected levels of sales and imports meant that although Hyundai exported approximately $68 million in Canadian goods, it came close to not meeting its export commitment. Hyundai's exports were partially attributable to its efforts to source auto parts in Canada for export to South Korea. The company's first contacts with Mr. Stevens and other representatives of DRIE, in the fall of 1984, were to obtain assistance in securing Canadian sources of parts for its automobiles.

Again in 1985 it appeared that sales and imports were destined to increase substantially beyond expectations, and by April or May DRIE realized that Hyundai could have a problem meeting the FIRA commitment because the level of imports was rising so rapidly. At that point, DRIE saw in the 50 percent export commitment an opportunity to sell more auto parts and other goods to Hyundai from within Canada.

Some time in the spring of 1985, Hyundai started to assess the feasibility of building an auto assembly plant in Canada. At a meeting at Mr. Stevens' farm on April 21, 1985, Mr. Park of Hyundai raised this possibility. At a meeting in Ottawa on May 17, Mr. Cheung, the president of Hyundai in South Korea, gave a fairly firm verbal commitment to establish such a plant in Canada, with a capacity to produce 100,000 cars per year. It had long been the hope of the Government of Canada to encourage foreign, particularly Asian, automakers to build assembly plants in Canada, but the government had not been especially successful in its attempts. The commitment by Hyundai, therefore, was met with enthusiasm, and in return Mr. Stevens proposed that Hyundai enter into a memorandum of understanding (MOU) with the Government of Canada that would provide for certain financial assistance to help establish such a facility.

At the outset of negotiations relating to the MOU, Mr. Gibbons testified that Hyundai had three goals. These may be summarized as follows:

1. to receive a promise by the Canadian government to impose no controls on imports of automobiles from South Korea;
2. to negotiate an agreement between South Korea and Canada with respect to tariff levels; and
3. to eliminate the FIRA commitment.

Mr. Gibbons testified that these three goals were communicated to the federal government by letter in June 1985. Officials of DRIE testified, and I accept their evidence, that they did not see this letter, and that they did not learn of Hyundai's desire to eliminate the FIRA commitment until July 17, 1985.

When DRIE was advised that Hyundai wanted the FIRA commitment waived as part of the MOU, DRIE took the position that those negotiations would have to be separate from the MOU negotiations and conducted with Investment Canada, which bore the responsibility for the enforcement of and any alteration to FIRA undertakings. Hyundai took the position that the waiver of the FIRA commitment should be part of the MOU negotiations because the construction of the assembly plant was feasible only if annual sales in the Canadian market reached 100,000 automobiles; yet at that level of sales, it knew, the FIRA commitment could not be met. The department, however, realized that Hyundai had little hope of living up to its export commitment in any event.

When DRIE received the draft MOU from Hyundai, which contained the waiver of the FIRA commitment, it notified Investment Canada. Investment Canada indicated that the FIRA commitment was an important one, and arranged for its own officials to discuss the matter with officials from External Affairs and DRIE. External Affairs took the position that the government should be cautious about relinquishing the undertaking, while Investment Canada stated that it did not object to the waiver, provided "its importance was recognized" and Investment Canada was involved in any negotiations.

Although Hyundai was told that the FIRA commitment would have to be negotiated separately from the MOU, the company always viewed the release from the commitment as part of the discussions over the MOU and the assembly plant. Mr. Gibbons testified that although Hyundai had never told DRIE that if there was no release from the FIRA commitment there would be no assembly plant in Canada, he thought DRIE understood that to be Hyundai's position.

When Mr. Park of Hyundai met with Mr. Stevens on August 13, 1985, Mr. Park made it quite clear that Canada could have either a Hyundai automobile plant or fulfilment of the 1983 FIRA commitment at a sharply reduced level of Hyundai activity, but not both. At this meeting, Mr. Stevens proposed a modification of the FIRA commitment. He suggested a replacement of the requirement that exports from Canada equal 50 percent of the value of imports with a requirement of a minimum level of exports of $100 million, regardless of the amount of imports. Hyundai also sought to have a commitment from the government included in the MOU that there be no import restrictions upon Hyundai automobiles. DRIE opposed this suggestion because import restraints were not in its mandate — they were of a nature that would require cabinet approval — and such a commitment would have the effect of binding future governments. The meeting concluded without any resolution of these issues or any agreement about the MOU. In the opinion of DRIE officials, the result of the meeting was to put the entire assembly plant project at risk.

After the meeting, Mr. Stevens met with Mr. Robert Brown and Mr. Stedman of DRIE to discuss the options open to the government and to provide directions to Mr. Stedman, who was given a mandate to negotiate with Mr. Gibbons of Hyundai. Subsequently, Mr. Stedman and Mr. Gibbons reached an agreement, subject to the approval of their superiors, that the FIRA commitment and the import-restraints questions would not be dealt with in the MOU. Instead, Hyundai would accept a letter from Mr. Stevens indicating that he, personally, would not support the imposition of import restraints. The FIRA commitment would be dealt with separately and replaced with a commitment by Hyundai to export $68 million in goods annually. This latter proposal was accepted by Mr. Park of Hyundai and Mr. Paul Labbé of Investment Canada and formally approved by Mr. Stevens on August 23, 1985.

At the same time, a framework for the resolution of the tariff issue was also negotiated by DRIE. Automotive imports from South Korea had been eligible for the general preferential tariff (GPT), which, before the federal budget introduced in May 1985, had the effect of allowing automobiles and auto parts to enter Canada duty free from South Korea. In May 1985 the budget changed the GPT on auto parts immediately to two-thirds of the most favoured nation rate, then 10.7 percent. (The duty-free status of automobiles continued until January 1, 1987, when the GPT for automobiles was also increased to two-thirds of the most favoured nation rate.) It was now agreed that Hyundai would obtain the same concessions with respect to duty remission as other automobile manufacturers in similar circumstances.

On August 29, 1985, during his trip to South Korea, Mr. Stevens, along with presidents Park and Cheung of Hyundai, signed the MOU regarding the establishment of a Hyundai assembly plant somewhere in Canada.

If the FIRA commitment had not been renegotiated in 1985, that year Hyundai would have been required to export goods valued at about $300 million. The actual value of goods exported from Canada by Hyundai in 1985 was $79 million.

Bromont Automotive Assembly Plant

The second benefit alleged to have been conferred upon Hyundai is the financial assistance provided by the federal government for the Bromont, Quebec, assembly plant. Evidence presented at the Inquiry established that, during the summer of 1985, Hyundai considered various sites for locating its assembly plant. Lavalin, a Montreal engineering consulting firm, prepared studies comparing various locations in Ontario and Quebec. In addition, sites in British Columbia were considered. Many of these potential sites were visited by Hyundai officials in June and July 1985. On August 29, 1985, at the time the MOU was entered into by Mr. Stevens and Hyundai, Mr. Stevens indicated to Hyundai that although he wished them to "give serious consideration" to a site in Quebec, he did not wish to become involved in the location of the plant and he wished to take no part in Hyundai's negotiations with various provinces.

Hyundai proceeded to negotiate with Quebec, Ontario, and British Columbia. According to Mr. Gibbons, the company felt neither Ontario nor British Columbia was prepared to offer benefits comparable to those offered by Quebec: significant funding, a conveyance of the land for a nominal sum of money, and a discount on electricity purchased. By October 21, Hyundai had virtually decided that the plant would be located in Quebec, and negotiations took place directly between the Quebec government and Hyundai officials. Neither DRIE officials nor other federal representatives were supplied with information about even the status of negotiations until the end of October 1985.

On October 29, 1985, Mr. Chaiton of Hyundai contacted Mr. Stedman and Mr. Burke of DRIE to discuss the status of Hyundai's negotiations with Quebec. Mr. Chaiton testified that he told the others that Hyundai and Quebec had come very close to an agreement and that the Quebec government would be contacting the federal government about an arrangement for costs. On November 6, 1985, officials from Hyundai met with members of DRIE and Mr. Stevens' executive assistant. Hyundai informed DRIE that it had not yet made a final decision on the location of the plant and did not expect to do so until late 1985 or January 1986. The Hyundai officials were advised that the financial assistance to be delivered by the federal government would have to be agreed upon by a joint federal-provincial team dealing with Hyundai, and that DRIE would have to complete financial projections and an analysis of the project.

On November 6, 1985, although Quebec and Hyundai had been engaged in extensive negotiations over the plant's location and financial support for it, a final agreement had yet to be made. On November 8 Mr. Charles Beaulieu, deputy minister of industry and commerce in Quebec, attended a meeting in Ottawa with officials from the Prime Minister's Office, and as a result of that meeting Mr. Stevens directed Mr. Robert Brown to contact officials from Quebec to move along discussions on the project. On November 12 the proposed agreement that Quebec was making to the federal government was delivered to Mr. Stevens at his farm, where he was recuperating from heart surgery. At this point the minister contacted Mr. Stedman and discussed the contents. Mr. Stevens then instructed Mr. Stedman to attempt to change the Quebec proposal from an equal sharing of the cost of assistance to Hyundai to an arrangement whereby Quebec would pay the first two years' interest on a $200 million loan, the federal government would pay the third and fourth years' interest, and the cost of the final year's interest would be shared by both governments. In addition, Mr. Stevens directed Mr. Stedman to attempt to obtain some guarantees in the agreement that the federal moneys would not be paid unless certain employment levels were reached.

Hyundai officials testified that, on the same day, November 12, Mr. Beaulieu telephoned Mr. Andrew Chong of Hyundai, advising that he believed negotiations with the federal government would be completed soon and asking Hyundai officials to attend a meeting in Quebec City on Wednesday, November 13. An agreement between Quebec and

Hyundai was entered into on November 15, 1985. Although the federal government was not a party to it, the Quebec government guaranteed to Hyundai that, in the event the federal government did not agree to share any of the interest charges on the $200 million loan, those payments would be met by the Quebec government.

Following cabinet approval, a memorandum of agreement was entered into on November 21, 1985, between the Government of Quebec and the Government of Canada, pursuant to both an existing Canada-Quebec subsidiary agreement on industrial development and the economic regional development agreement, which together allocated $350 million to projects. This November agreement included the following terms, as suggested by Mr. Stevens:

1. That Quebec was entirely responsible for year 1 and year 2 of financial assistance, the federal government was responsible for years 3 and 4, and Canada and Quebec were jointly responsible for year 5. The result of this deferral of the federal contribution meant that the present value of federal assistance was $34 million, compared with $46 million from Quebec.
2. That the bulk of federal assistance would not be provided unless Hyundai had in fact met its performance objectives of providing 1200 jobs and having an automobile assembly plant in commercial production at the rate of 100,000 vehicles per year.

The extensive analysis of the project contemplated by DRIE as a condition precedent to federal support was not in fact carried out. Evidence disclosed, however, that such an analysis would simply have established the "theoretical" viability of the assembly plant. The final structure of the federal-provincial arrangement required Hyundai to establish the plant's "actual" commercial viability before it became eligible for the bulk of federal assistance. As Mr. Robert Brown, associate deputy minister of DRIE at the time the MOU was entered into, explained:

> Q. Did the restructuring of the payment provisions have any impact on the merits of the federal involvement in the project so far as you were concerned?
>
> MR. BROWN: Yes. We thought that the way in which it was arranged was such that the federal government was well protected in terms of the investment that was being made because the funding flowed in the latter years of the project and it was also tied to a production level and the creation of the 1,200 jobs.
>
> (Transcript, vol. 54, p. 9823)

Mr. Brown testified that although the moneys had been promised by the federal government without the usual procedure of an analysis being done in order to determine the benefits of the investment, these guarantees, when considered in conjunction with the relative commitments given by the federal and provincial governments, ensured that the agreement was a good one from the federal government's perspective. It was on this basis that Mr. Brown recommended the agreement to the minister.

Evidence Relating to Links between Hyundai and the Hanil Bank

Evidence received by this Commission on the relationship between the Hanil Bank and the Hyundai group of companies established only a remote connection between the two. Certainly when viewed from the context of the allegations, the relationship is not sufficiently substantial or close to give rise to the inference that control could be exerted by one body over the other, or more particularly that Hyundai was in any position to influence the Hanil Bank in its dealings with customers.

The evidence of their relationship may be summarized as follows:

- The Hyundai group of companies is one of the largest industrial and commercial conglomerates in South Korea, and the Hanil Bank is one of the largest banks.
- The shares of the Hanil Bank are publicly traded in South Korea; in December 1985 there were 137 million shares of Hanil issued and outstanding.
- On December 31, 1985, four members of the Hyundai group of companies — Kuk Il Security Co. Ltd. (now Hyundai Security Co. Ltd.), Han Kuk Urban Development Co. Ltd., Hyundai Cement Co. Ltd., and Hyundai Heavy Industry Co. Ltd. — owned a total of 11,381,729 shares of the Hanil Bank, or 8.3 percent of the issued and outstanding shares.
- Of the foregoing shares, Kuk Il Security Co. Ltd. owned 10,233,083, or 7.47 percent, of the issued and outstanding shares.
- Kuk Il Security Co. Ltd. is a securities firm that buys and sells securities for its clients. Of the 10,233,083 shares of the Hanil Bank held by Kuk Il Security Co. Ltd., 8,272,952 were held on behalf of clients and 1,960,131 were held for its own account. If the shares held in clients' accounts are subtracted, the Hyundai group is the ninth largest shareholder of the Hanil Bank, with approximately 2.27 percent of the issued and outstanding shares of the bank as at December 31, 1985.
- As at December 31, 1985, total loans outstanding from the Hanil Bank to the Hyundai group were $92,721,000 (Cdn.), or 2.33 percent of Hanil Bank's total loan portfolio.
- As at December 31, 1985, loans outstanding to Hyundai Corporation from the Hanil Bank were $3,877,000 (U.S.), or 7.3 percent of the total indebtedness of Hyundai Corporation.
- There were no loans outstanding to Hyundai Motor Corporation. Hyundai Corporation and Hyundai Motor Corporation are the only

members of the Hyundai group that are involved with Hyundai Canada Inc. and the subsidiary, Hyundai Auto Canada Inc.

- There are no Hyundai nominees on the board of directors of the Hanil Bank.
- Neither Hyundai Canada Inc. nor Hyundai Auto Canada Inc. has borrowed any money from Hanil Bank Canada.
- The witnesses called from the Canadian operations of Hyundai and the Hanil Bank said that they were completely unaware of any alleged "relationship" between their respective corporations before reading the *Globe and Mail* article of March 27, 1986.
- Mr. Stevens testified that he knew of a banking relationship between Hyundai and the Hanil Bank at the time of his trip to South Korea in August 1985, but was unaware of any shareholding until the *Globe and Mail* article of March 27, 1986. Further, he testified that he was informed about the banking relationship by the Canadian embassy just prior to leaving for South Korea or while there.

It is obvious from the foregoing that neither the shareholdings nor the banking relationship between the Hyundai group of companies in South Korea and the Hanil Bank is so close that favourable treatment to a Canadian subsidiary of Hyundai Corporation could or would result or appear to result in favourable treatment by the Hanil Bank in South Korea. Furthermore, the evidence was overwhelming that Mr. Stevens was unaware of any shareholding connection between the Hanil Bank and Hyundai. Mr. Stevens first became aware of such a connection in March 1986, just prior to the time of the *Globe and Mail* article of March 27, 1986, which gave rise to many of these allegations. Even the Hyundai representatives who appeared before the Inquiry were unaware of this relationship. Therefore, there can be no doubt Mr. Stevens could not and did not seek to exploit a relationship of which he was unaware.

Conclusions

The foregoing evidence establishes beyond doubt that the allegations involving Mr. Stevens' dealings with Hyundai were without foundation. In fact, it would be quite accurate to say that there is a complete absence of evidence that Mr. Stevens had any personal pecuniary interest in Hyundai or that he stood to gain in any way by giving Hyundai favourable treatment. This is amply demonstrated by the remote nature of the relationship between the Hanil Bank and Hyundai.

Further, the extensive evidence involving the benefits received by Hyundai established that in each case Mr. Stevens acted, entirely properly, within the scope of his public duty and on the advice of his department. With respect to the location of the parts plant in Newmarket, Ontario, Mr. Stevens played no role in the decision to locate the plant in his riding.

Chapter 23

The Allegations Relating to the Mingling of Private and Public Business

The fourth allegation that I must consider is the general allegation that Mr. Stevens mingled his private interests with his public duties while he was a minister of the Crown. Commission counsel submitted evidence that Mr. Stevens used his public office for private advantage and mixed government and private business on at least five occasions:

- in his dealings with the Chase Manhattan officials;
- in his meeting with Mr. Angus Dunn of Morgan Grenfell;
- in his dealings with Mr. Tom Kierans of McLeod Young Weir;
- in his telephone call to Mr. Ken Leung of Olympia & York; and
- in his visit to the Hanil Bank in Seoul, South Korea.

I shall deal with each of these in turn.

The Meeting with Chase Manhattan Bank Officials

I have already set out in Chapter 11 the evidence relating to the development of the Christ coin proposal and the discussions with Mr. Jim Stewart of Chase Manhattan Capital Markets Corporation that led eventually to the visit by Mr. and Mrs. Stevens to the Chase Manhattan offices in New York City on January 17, 1986. Mr. and Mrs. Stevens were interested in meeting with Mr. Stewart and his colleagues at Chase Manhattan to discuss the Christ coin proposal and Chase Manhattan's involvement as a sponsoring financial institution. Mr. Stevens was also interested in meeting with the Chase Manhattan officials for government-related reasons.

Mr. Stevens testified that the Chase Manhattan officials requested a meeting with him in his capacity as minister responsible for DRIE because they wanted an opportunity to persuade Mr. Stevens that they should be awarded certain government consulting contracts. Chase Manhattan was interested in obtaining consulting work for three Cape Breton projects in particular: the modernization of the Sydney Steel Corporation (Sysco); the development of a thermal-electricity generating plant; and the financial evaluation of the Point Tupper oil refinery. Chase Manhattan was also interested in becoming more involved in Canadian investment banking generally. As Mr. Stevens agreed in his testimony, the Chase Manhattan officials were "trying to get work" (Transcript, vol. 74, p. 12,949). Mr. Stevens testified in this regard as follows:

> A. Essentially, Chase Manhattan were trying to convince myself that they had services that they felt they could offer us or sell us in four different areas. That was the nature of the day, if you like. They were wanting to sell us on what they felt they could do in the name of Sysco, what they could do with regard to the [thermal-]generating plant, what they felt was possible as far as the Point Tupper Gulf refinery was concerned. It was all, if you like, a hearing session on my part and on their part an opportunity to . . . sort of trying to sell their real estate.
>
> Q. They were trying to get work; is that right sir?
>
> A. Yes.
>
> (Transcript, vol. 74, p. 12,949)

Chase Manhattan Capital Markets Corporation had already been awarded a $65,000 contract by CCERD on December 10, 1985. The contract required that Chase Manhattan assess the financial risks of a proposed nuclear reactor transaction with the Turkish government. In his capacity as the chairman of CCERD, Mr. Stevens gave formal approval to this contract on December 23, 1985, one week after meeting with Mr. Christopher (Chris) Rocker, the president and chief executive officer of Chase Manhattan Bank of Canada, and Mr. Jim Stewart of Chase Manhattan Capital Markets Corporation. The Turkish reactor consulting contract was awarded to Chase Manhattan Capital Markets Corporation because it had been involved in the financing of the Bosphorus bridge and thus had some familiarity with Turkey.

The meeting with Mr. Rocker and Mr. Stewart of Chase Manhattan was held in Ottawa on December 16, 1985. Mr. Jim Howe, a special projects officer with DRIE, was also present. The matters discussed included Chase Manhattan's involvement in the Turkish reactor project and its possible involvement in a number of other government consulting projects in Nova Scotia.

By January 16, 1986, when Mr. Stewart and Mr. Michael Hudson of Chase Manhattan Capital Markets Corporation visited with DRIE officials in Ottawa, Chase Manhattan was beginning to express an interest in the three additional consulting contracts described above — the financial review of Sysco, the analysis of a thermal-electricity generating station in Cape Breton, and the assessment of the Point Tupper oil refinery. These three consulting contracts were more substantial than the Turkish contract, both in scope and in fee.

On January 17, 1986, Mr. and Mrs. Stevens accompanied Mr. Stewart and Mr. Hudson to New York for the meetings with the Chase Manhattan officials. Mr. Howe, the special projects officer for DRIE, testified that as of this date the Sysco project was "alive" and Chase Manhattan was being considered for it (Transcript, vol. 68, p. 11,704).

Chase Manhattan was also being considered for the thermal-energy contract and the Point Tupper oil refinery project. Mr. Howe also testified that Mr. Stevens, as the minister responsible for DRIE and CDIC, had final authority to decide to whom the consulting contracts would be awarded.

Mr. and Mrs. Stevens' visit to the Chase Manhattan offices on January 17, 1986, as noted earlier, consisted of a day-long series of meetings. In the morning, Mr. and Mrs. Stevens discussed their Christ coin proposal with the Chase Manhattan officials, and then Mr. Stevens discussed Chase Manhattan's possible involvement in the Sysco project. In the afternoon, Mr. and Mrs. Stevens discussed the Christ coin proposal with the bank officials again, and then Mr. Stevens discussed the three government projects: Sysco, the thermal-energy plant, and the Point Tupper oil refinery. As noted earlier, Mrs. Stevens participated in the Christ coin discussions but took no part in the discussions of government-related matters although, odd as it may seem, she remained in the room for some of the time while the latter discussions took place.

After returning to Toronto, Mrs. Stevens continued to pursue the Christ coin proposal with letters to Cardinal Carter and to Mr. Stewart at Chase Manhattan. This evidence was set out earlier. Mr. Stevens, as minister responsible for DRIE, remained involved in the negotiations with Chase Manhattan concerning the Sysco project. The Commission heard extensive evidence relating to the negotiation of the proposed Chase Manhattan consulting contract for the Sysco project, much of which is not germane. It is sufficient to note here that Mr. Stevens resigned from the cabinet before the Sysco consulting contract could be awarded and that his successor did not proceed with the matter.

As events turned out, the Sysco project did go forward but without the benefit of a consulting report from a financial adviser. Indeed, no further steps were taken to retain either Chase Manhattan or any other private sector financial consultant.

Conclusions

A number of witnesses gave evidence in this area. Both Mr. and Mrs. Stevens testified about the Christ coin proposal, the meetings with the Chase Manhattan officials on January 17, 1986, and the events thereafter. Mr. Chris Rocker and Mr. Jim Howe gave evidence. The Inquiry also had the benefit of a letter from counsel for the Chase Manhattan Bank in New York City, filed as an exhibit in this Inquiry, that set out the meetings that were held and the topics that were discussed on January 17, 1986.

The evidence concerning Mr. Stevens' dealings with the Chase Manhattan officials is largely uncontroverted. Mr. Stevens participated in the morning and afternoon discussions of the Christ coin proposal from a private business perspective. As minister responsible for DRIE, he met with many of the same Chase Manhattan officials in the morning and the afternoon to discuss Chase Manhattan's interest in the three government consulting contracts.

Mr. Stevens knew that it was important to attract a reputable financial sponsor such as Chase Manhattan to make the Christ coin proposal commercially viable. He also knew that the Chase Manhattan officials were interested in meeting with him as minister responsible for DRIE in order to obtain government consulting contracts for the three projects.

I find that Mr. Stevens mixed private business and government business in his meetings with the Chase Manhattan officials on January 17, 1986. I also find that in these circumstances Mr. Stevens was in a position of conflict of interest.

Mr. Stevens testified that there was no suggestion that Chase Manhattan would obtain the government-related consulting work if it agreed to participate in the coin deal. Counsel for the federal government made a similar submission — that there was no evidence of Mr. Stevens purporting to offer the government consulting work "in exchange for" consideration by Chase Manhattan of the Christ coin proposal. I am prepared to accept Mr. Stevens' evidence that the discussions of the Christ coin proposal on the one hand, and the government consulting projects that Chase Manhattan was pursuing on the other, were not on a quid pro quo basis. Indeed, had this been so, both Mr. Stevens as minister and the Chase Manhattan officials as applicants for government-related work would have been in violation of the criminal law of Canada. However, the fact that Chase Manhattan's involvement in the private Christ coin project was not explicitly conditioned on the award of the government consulting contracts does not alter the fact that Mr. Stevens' mingling of his private interests and his public duties was a conflict of interest.

The evidence of "mingling" private interests and public duties could not be clearer: Mr. Stevens discussed the bank's overtures for government consulting work in his capacity as public office holder and at the same time attempted to involve the same bank in his own private money-making proposal.

To use the definition set out earlier, I find that Mr. Stevens was in "a situation in which a minister of the Crown has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities."

I find that Mr. Stevens was in a position of real conflict of interest when he discussed private and public matters with the Chase Manhattan Bank on January 17, 1986.

The Meeting with Mr. Dunn of Morgan Grenfell

I have already set out in Chapter 12 the evidence relating to the evening meeting that Mr. Stevens had with Mr. Angus Dunn of Morgan Grenfell in Mr. Stevens' hotel room in Singapore on or about March 1, 1985. At the conclusion of their discussion about the role that Morgan

Grenfell might play in the CDIC privatization program, Mr. Stevens presented Mr. Dunn with a financial brochure relating to either Sentry Oil or Canalands and indicated to Mr. Dunn that Mrs. Stevens had certain business interests involving a company with offshore oil rights. Mr. Stevens then asked Mr. Dunn if Morgan Grenfell could help find investors for this company.

Conclusions

This incident is another example of Mr. Stevens mixing his private business interests with his public responsibilities. Mr. Stevens was well aware of the fact that Morgan Grenfell was interested in participating in the CDIC privatization program and obtaining government consulting work. Mr. Stevens, as minister responsible for both DRIE and CDIC, had the authority to award or to influence the award of such contracts. At the conclusion of the discussion of government-related matters, Mr. Stevens took advantage of the opportunity and decided to pursue his private interests as well. I find that Mr. Stevens mixed private and public business in his meeting with Mr. Angus Dunn.

I also find Mr. Stevens' request to Mr. Dunn that Morgan Grenfell help find investors for Sentry or Canalands, made in circumstances in which Mr. Dunn and Morgan Grenfell were obviously interested in winning the minister's approval for government consulting work, to be a conflict of interest. No actual decision was taken by Mr. Stevens at the meeting favouring Morgan Grenfell, and, as events developed, no government consulting contract was ever awarded to Morgan Grenfell. Nevertheless, the discussion of private business with an individual seeking government business placed Mr. Stevens in a situation in which he had a private economic interest that was indeed sufficient to influence the exercise of his public duties and responsibilities as the minister responsible for CDIC. I find that Mr. Stevens was in a real conflict of interest in his meeting with Mr. Dunn.

The Meeting with Mr. Kierans of McLeod Young Weir

I have already set out in Chapter 13 the evidence relating to Mr. Stevens' meeting with Mr. Tom Kierans of McLeod Young Weir on July 31, 1985. I have accepted Mr. Kierans' evidence that at the end of the meeting, after a discussion of the government-related Atlantic Development Fund proposal, Mr. Stevens raised the unrelated topic of strip bonds and asked Mr. Kierans if he could help Mrs. Stevens with a conceptual problem that she was having with a strip bond portfolio. What followed thereafter — Mrs. Stevens' telephone call on August 1 or 2, 1985, to arrange a meeting; Mr. Stevens' telephone call on August 4 with regard to the possibility of Mr. Kierans' appointment as a deputy minister at DRIE; the meeting between Mr. Kierans and Mrs. Stevens on August 6, 1985; and their discussion of the Georgian Trust strip bond portfolio — has been set out above. My concern here is to assess whether in his dealings with Mr. Kierans during this period Mr. Stevens was again mixing private and public business.

In this regard, the Commission heard evidence from Mr. and Mrs. Stevens, Mr. Kierans, and Mr. Peter Nares of Richardson Greenshields. The status of the government-related discussions during this period was as follows. On May 8, 1985, Mr. Kierans had written to Mr. Stevens as minister responsible for CDIC, setting out a number of suggestions for the disposition of CDIC assets which would assist the federal government in its privatization process and would also involve McLeod Young Weir in the privatization program. Mr. Kierans suggested in particular the use of exchangeable debentures as a vehicle for the privatization of certain CDIC assets. Although the suggestion was primarily concerned with the disposition of the CDC shares, the idea of using exchangeable debentures as a potential low-cost funding mechanism for other federal initiatives attracted Mr. Stevens' interest some months later.

On July 31, 1985, Mr. Stevens met with Mr. Kierans and discussed the exchangeable securities idea in the context of raising funds for regional development. They discussed the Atlantic Development Fund and how exchangeable debentures or exchangeable preferred shares could be used to finance the Atlantic Development initiative.

Between July 31 and August 12, 1985, a number of telephone conversations were held between Mr. Stevens and Mr. Kierans on the same matter, and on August 12, 1985, Mr. Kierans, in a letter to Mr. Stevens, set out the McLeod Young Weir proposal for using exchangeable securities as a source of government funding.

Some time between August 7 and August 16, 1985, Mr. Stevens advised Mr. Kierans that Mr. Nares of Richardson Greenshields would also be involved in the Atlantic Development Fund initiative and suggested that McLeod Young Weir and Richardson Greenshields work on the project together. Mr. Kierans and Mr. Nares met with Mr. Stevens on August 16, 1985, and wrote a joint letter to the minister on August 28, 1985, setting out the exchangeable debentures proposal in more detail. Mr. Stevens forwarded the proposal to his own officials for further review. The proposal was not pursued, however, and, as things turned out, nothing further developed.

Conclusions

I find on the evidence that here again, in his dealings with Mr. Kierans, Mr. Stevens mixed private and public business. At the end of his meeting with Mr. Kierans on July 31, 1985, after a discussion of the McLeod Young Weir proposal for using exchangeable debentures to raise federal money for the Atlantic Development Fund project, Mr. Stevens took advantage of the opportunity to ask Mr. Kierans for his help or guidance on what I found to be the Georgian Trust strip bond portfolio.

I also find in the circumstances of the July 31, 1985, meeting and in the developing involvement of McLeod Young Weir in the albeit short-lived Atlantic Development Fund initiative that Mr. Stevens was in a position of real conflict of interest. I acknowledge that Mr. Kierans testified that as far as he was concerned there was no connection between McLeod Young Weir's involvement in the Atlantic Development Fund and the company's discussions with Mrs. Stevens and its subsequent bid on the strip bond portfolio. Mr. Kierans also testified that Mr. Stevens never indicated to him that there was any such explicit connection or quid pro quo. I accept Mr. Kierans' evidence in this regard.

Nonetheless, even if Mr. Kierans felt no connection between or discomfort from the mixing of private and public interests at the July 31, 1985, meeting, Mr. Stevens as a public office holder was in a position of conflict. I have already found that Mr. Stevens had knowledge of his private economic interests and, particularly in this period, of the financing issues relating to the Georgian Trust strip bond portfolio. I also find that Mr. Stevens' private interest at this time was sufficient to influence the exercise of his public duties and responsibilities as a minister responsible for DRIE and CDIC. Mr. Stevens had the ministerial authority to shape and direct regional development projects, such as the Atlantic Development Fund, even in their formative stages. Mr. Stevens was also aware that McLeod Young Weir's interest in the Atlantic Development Fund initiative, although legitimate, was not wholly altruistic. Mr. Stevens testified in this regard as follows:

> Q. Can I assume that their [McLeod Young Weir's] motives, while having an interest in being helpful to the Minister in the discharge of his responsibilities, were not entirely altruistic and they were looking for work, as was everybody else?
>
> A. Yes, if they could interest us in a suitable proposal, they naturally would like to be retained to put it in place.
>
> (Transcript, vol. 73, p. 12,626)

I thus find that in his meeting with Mr. Kierans on July 31, 1985, and in his dealings with him in the weeks that followed, Mr. Stevens was in a situation in which his private economic interests were sufficient to influence the exercise of his public duties and responsibilities. He was in a position of real conflict of interest.

The Telephone Call to Mr. Leung of Olympia & York

The evidence relating to Mr. Stevens' telephone call to Mr. Ken Leung of Olympia & York Developments in early August 1985 has already been set out in Chapter 14. I have found that Mr. Stevens telephoned Mr. Leung in early August 1985 and asked him if he would meet with Mrs. Stevens. Shortly thereafter, Mr. Leung met briefly with Mrs. Stevens and Mr. Douglas Coyle, a computer analyst. They discussed the application of strip bonds to the financing of real estate limited partnerships. I have also found that Mrs. Stevens' meeting with Mr. Leung in early August 1985 was part of her effort to utilize the bond portfolio held by Georgian Trust as a vehicle for financing. Her failure to find such a vehicle was instrumental to the determination that the bond portfolio had to be liquidated. I have also found that Mr. Stevens was aware of these developments in his private affairs as they were occurring.

Mr. Stevens' telephone call to Mr. Leung, a senior vice-president of Olympia & York, was made at a time when Mr. Stevens, as the minister responsible for Investment Canada, was involved in extensive dealings with Paul and Albert Reichmann, the principals of Olympia & York, with regard to their bid to take over Gulf Canada. Miss Walker testified that Mr. Stevens was dealing with Olympia & York on "official business" (Transcript, vol. 12, p. 1583). Her diary entry for August 7, 1985, refers to "O & Y" and to "Petrocan dealing w/Gulf Canada" (SW-4-116). Miss Walker explained that this entry was related to ministerial business that "at that time . . . concerned the Gulf matter" (Transcript, vol. 12, p. 1583). At the bottom of the same page of the diary there is the inscription

/ KEN
NMS / LEUNG
DOUG COYLE / 2 pm if poss.

(SW-4-116)

Mr. Leung testified that he was not "personally involved" in the dealings that Olympia & York was having with Mr. Stevens at this time but "knew what was happening" (Transcript, vol. 55, p. 9984).

Conclusions

I find the telephone call to Mr. Leung, a senior vice-president at Olympia & York, at a time when Mr. Stevens, as minister responsible for Investment Canada, was dealing extensively with other senior officials at Olympia & York to be another example of Mr. Stevens' mixing private interests and public responsibilities.

I also find that Mr. Stevens' approach to Mr. Leung for private financial reasons, at a time when Mr. Stevens was exercising public duties and responsibilities involving the corporation that Mr. Leung worked for, placed Mr. Stevens in a position of real conflict of interest. The fact that Mr. Leung was not personally involved in his company's dealings with Mr. Stevens as minister is of no moment. Mr. Leung was a senior vice-president of Olympia & York, and he "knew what was happening"; in any event, Mr. Stevens would not have assumed otherwise. By requesting private help from a senior officer of a corporation with which he was dealing as a public office holder, Mr. Stevens was in a real conflict of interest position.

Visit to the Hanil Bank in Seoul, South Korea

The Hanil Bank is one of the five largest banks in Korea, with consolidated assets of almost $10 billion U.S. It is also one of the two Korean banks active in Canada, the other being the Korea Exchange Bank. The Toronto office of Hanil Bank Canada, located on the 69th floor of First Canadian Place, reports directly to its head office in Vancouver, which in turn reports to Seoul, South Korea. This hierarchy is reflected in the protocol established for the extension of credit by the bank. Both the Toronto and Vancouver offices have discretionary limits within which they may extend credit. If a credit request is beyond the discretionary limit of the Toronto office, Toronto prepares a credit submission to the Vancouver office, which either approves the request if it is within its limit or forwards the matter on to Seoul for determination.

Arnold Denton has been vice-president of corporate credit for the Hanil Bank office in Toronto since March 31, 1983. Prior to assuming his position at the Hanil Bank, Mr. Denton was employed by a number of other banks, including the Mercantile Bank of Canada, where he was assistant vice-president. His job at the Mercantile Bank was to call upon midsized corporations that might be looking for funds, and some time in 1978 he called upon Mr. Stevens, who held a brief discussion with him and referred him to Mr. Ted Rowe.

A number of discussions ensued between Mr. Denton and Mr. Rowe, who ultimately decided that the refinancing proposals put forward by Mr. Denton would not result in a sufficient economic gain to York Centre, given the legal costs of refinancing, to justify their implementation. Although the proposals were not pursued, Mr. Denton agreed to stay in touch.

In 1982 Mr. Denton, now employed by Comerica Bank Canada, again contacted Mr. Stevens, this time to discuss a specific proposal involving strip bonds. Mr. Denton testified that although he was extremely interested, the matter was not pursued because his superiors at the Comerica Bank did not understand or appreciate the concept.

Hanil Bank as Creditor to the York Centre Group

When Mr. Denton joined the Hanil Bank in March 1983 he contacted Mr. Stevens, and in April 1983, over lunch with Mr. Stevens and Mr. Rowe, the subject of strip bonds was again discussed. Following this meeting, three loans were extended to the York Centre group of companies. Two were advanced in April 1983 and the third in September 1983. The total loan amount was $3.55 million.

The first loan advance, through a $1.5 million line of credit to YCPL, was extended to finance an inventory of strip bonds. The collateral was a specific pledge of the bonds themselves, under a margin formula requiring YCPL to provide 133 percent in market value of the bonds for each dollar of loan advanced. The maximum amount advanced under this line of credit was $1.45 million, which was drawn by September 13, 1983. This loan was paid down in two payments, the first on February 28, 1985, for $250,000, and the second on August 14, 1985, for the outstanding amount.

The second loan was a $1 million line of credit, which was extended to Cardiff Construction to repay its debt to CIBC and to provide fresh working capital. Collateral mortgages on four separate properties were taken to secure the loan. This loan was paid down in one payment of $1 million on May 16, 1985.

The third loan, advanced in September 1983, was a $1.1 million line of credit extended to Gill to assist in paying down its debt to CIBC and to inject additional capital into the company to reinvest in York Centre shares. Security for the loan was 400,000 Class A common shares of York Centre, and a condition was that moneys advanced would not exceed 45 percent of the value of the shares held as collateral. This loan was paid down by $200,000 on February 28, 1985, $100,000 on August 29, 1985, $25,000 on November 15, 1985, and $350,000 on April 10, 1986, leaving an outstanding balance of $425,000.

During the period from March 1983 to October 1984, Mr. Denton either saw or spoke to Mr. Stevens as regularly as once a month. Initially these contacts revolved around setting up the loans, but later their discussions covered the broad areas of politics, government spending, and government's role in business. In matters dealing with the Gill loan, Arnold Denton dealt with either Sinclair Stevens or Ted Rowe during this period. Then, in a letter dated November 29, 1984, Mr. Rowe advised Mr. Denton that Mr. Stevens, having entered government, could have no further business dealings with the Hanil Bank in relation to the York Centre group of companies. After this time, Mr. Denton dealt with Mr. Rowe in connection with all these loans, as often as once every couple of months. In their discussions, Mr. Denton was generally kept informed of York Centre's efforts to obtain financing.

One of Mr. Denton's responsibilities was to conduct the annual review of the credit extended to the York Centre group of companies, and in December 1984 he called Mr. Rowe, requesting updated financial statements for York Centre, Canalands, and Sentry. In addition, he requested updated information concerning the officers and directors of Gill, Cardiff Construction, and YCPL, along with a business plan on the objectives of all the corporations. On the same occasion, he discussed Mr. Stevens' position in the company. Mr. Denton testified that, because the Koreans had some misunderstanding of the nature of a blind trust, they wanted him to explain how it worked. Mr. Denton further testified that, to explain this, he both forwarded to Seoul a copy of Mr. Rowe's letter and indicated verbally that "[i]t is my understanding that Mr. Stevens still is the beneficial owner of any shares, but he himself . . . cannot be involved in any business affairs of companies which he has an interest in" (Transcript, vol. 17, p. 2544).

The York Centre group's credit facility with the Hanil Bank was approved, overseen, and directed from Seoul upon the advice of the Toronto and Vancouver offices.

Mr. Denton, who negotiated the three loans on behalf of the Hanil Bank and generally supervised the advice given, was obviously impressed by his association with Mr. Stevens. He made liberal use, as did Mr. Denton's colleagues at the Hanil Bank, of the minister's connection with York Centre in supporting the loan applications and renewals. Mr. Denton and his associates variously described the minister as "a prominent & respected Toronto Businessman," a "well respected Toronto Businessman and Prominent Member of the Canadian Government," and possibly a future "minister of finance" (Exhibit 102, pp. 86, 56, 168). Although such descriptions may reflect Korean custom, Mr. Denton's constant reference to the minister's interest in and involvement with the companies was occasionally inaccurate and seemed designed both to ensure the continuation of the credit to the York Centre group and to suggest the importance of the minister's connection to the bank. It should be noted that there is nothing in the evidence indicating that Mr. Stevens sought to be so described or in any way encouraged Mr. Denton in this regard.

Mr. Denton testified that the Hanil Bank was not placing any pressure on any of the York Centre group of companies with respect to the outstanding loans. Mr. Denton testified, however, that when in February 1985 YCPL wished to dispose of the B.C. Hydro bonds that were held by the bank as collateral for its loan to YCPL, the bank, on instructions from Seoul, required not only a reduction of YCPL's loan but also a $200,000 reduction in the Gill loan. It is a reasonable conclusion that this $200,000 reduction was required because the Class A York Centre shares securing the $1.1 million loan to Gill had declined in value. As a result, the margin deficiency on or about February 28, 1985, was approximately $900,000.

Shirley Walker's diaries contain extensive reference to the February bond sale. She recorded the need to sell the bonds, the possible disposition of their proceeds, the requirement that Mr. Denton obtain permission from Seoul to release the bonds, and that Hanil required a $200,000 paydown of the Gill loan.

On or about February 26, 1985, Shirley Walker made the notation:

> Seoul telex
> Value of bnds being sold
> called Burns
>   got lower valuations
>   Price two weeks ago
>
> very embarrassing situation
>
> Say maybe Mr. S
>   will call your
>   President in Seoul
>   Mr. Lee

(BB–10–64)

Miss Walker testified that this entry contains reference to a suggestion made by Mr. Denton that Mr. Stevens call the president of the Hanil Bank in Korea because Mr. Lee, the head of the bank in Canada, was not responding quickly enough to the request to release the bonds. Miss Walker testified that this course of action proved unnecessary, as the bonds were released shortly after the date of the entry.

Further, during the period between February and May 1985, Mr. Denton spoke to individuals at York Centre about the Cardiff Construction loan. Mr. Denton pointed out that the loan had been outstanding for two years; Hanil Bank would like to have some partial repayment. Shortly afterward, Mr. Rowe contacted Mr. Denton and told him that the Cardiff Construction loan was to be repaid since the properties had increased in value and could be refinanced for greater amounts elsewhere. The Cardiff Construction loan was repaid in full on May 16, 1985, from the proceeds of the $2.62 million loan from Anton Czapka.

By August 1985 the remaining bonds being held as collateral on the $1.2 million YCPL loan had increased in value. Nevertheless, and despite the fact that the margin formula would have been kept intact, Hanil Bank refused to lend more money on the basis of these bonds. It was Mr. Denton's understanding that the complete paydown of the YCPL loan of August 14, 1985, occurred because the company was in a position to borrow a greater amount against the bonds from a less conservative lender. (As discussed in Chapter 6, these bonds were not used as collateral to raise money, but rather were liquidated.)

The Gill loan began to experience difficulty in the summer of 1985. An application to renew the loan for the outstanding amount of $900,000 had been made in the spring, and on July 2, 1985, a telex from Seoul approved the renewal but directed Mr. Denton to continue closely monitoring the value of the collateral to ensure that Gill did not exceed the 45 percent loan-to-collateral ratio. By late July or early August the value of the 400,000 Class A shares of York Centre that were held as security dropped significantly. The loan was now undermargined, and the Hanil Bank called upon Gill for additional York Centre shares. These were provided on August 19, 1985, by way of a pledge of 16,000 additional YCC Class A shares, and again on August 28, by way of a further 78,700 YCC Class A shares and a paydown of the loan by $100,000.

It is worth noting that even with this additional security and the $100,000 paydown, the Gill loan was still not at or below the 45 percent loan-to-collateral ratio required by the bank. Also significant is that Gill did not have the assets to make this additional security available. By far the largest asset of Gill was its holding of 413,500 Class A shares of York Centre, 400,000 of which were already pledged as security for the loan. The shares ultimately made available were purchased from Dominion Securities by Stevens Securities for $32,074, and were pulled from the margin account of Georgian Equity at McLeod Young Weir after the payment of $132,932. In each case, the moneys made available to buy or release these shares were from the proceeds of the sale of the bonds held as collateral on the YCPL loan. The proceeds of the bond sale were also used to provide the $100,000 paydown of the Gill loan (see figure 6.2.).

Around this time, most probably in early July, Arnold Denton spoke with both Shirley Walker and Ted Rowe to discuss the "bad rumours on the street" that the firm was in a "cash crunch" (Transcript, vol. 17, p. 2669). He also commented that the company would soon be two months in arrears on its interest payments to the Hanil Bank. Mr. Denton told them that should this occur, he would have to report it to his superiors in Seoul. At this point, Mr. Denton, although aware of the blind trust, believed that Mr. Stevens was still the beneficial owner of the Gill shares. This information had been received from Mr. Rowe while renewing the Gill loan in April. Mr. Denton believed that Mr. Rowe was in a position to be aware of Mr. Stevens' status because Mr. Rowe owned a 20 percent interest in Gill and was the person who ran the company on a day-to-day basis.

The Trip to Seoul

Some time in the first week of August 1985, Arnold Denton received a telephone call from Shirley Walker, inviting him to a meeting with the minister. On August 6 Mr. Denton met with Mr. Stevens and discussed the minister's pending government trade mission to South Korea. In general, Mr. Stevens was interested in finding out about the country and the nature of its people — what he might expect during his visit. The minister asked whether or not it would be a good idea if he were to pay a courtesy call on the president of the Hanil Bank in Seoul, and Mr. Denton replied that he could see nothing wrong with such a visit. Mr. Stevens made the point some time during this discussion of telling Mr. Denton that it was not his intention to discuss any business affairs pertaining to York Centre with the president of the Hanil Bank, and he invited Mr. Denton to assure the executives of the Hanil Bank of that fact, should they have any concern. By the end of the meeting, Mr. Denton was invited to coordinate with Miss Walker a convenient time for Mr. Stevens' proposed visit.

Upon receiving the minister's request, Mr. Denton informed his superiors in the Toronto office of Mr. Stevens' proposed trip and his interest in meeting the president of the Hanil Bank. Through Mr. Jung, vice-president of the Toronto office, contact was made with Seoul to find out whether the president would be interested in meeting the minister. Receiving an informal indication that the request would be treated positively, Mr. Denton forwarded to Seoul the minister's itinerary and a biographical note, both provided by Shirley Walker. The biographical note included a description of Mr. Stevens as the former chairman of York Centre Corporation.

On August 9 Mr. Denton informed Miss Walker that the president of the Hanil Bank would be prepared to meet with the minister on August

26 or 27. The same day, the Department of External Affairs sent a telex to the Canadian embassy in Seoul, stating that the minister wished to meet with Mr. Hong Wul Sul, president of the Hanil Bank. The telex specified that the meeting could be "low profile so as to spare the sensitivities of larger competitors" (Exhibit 216, p. 13).

On August 12 Mr. Denton called the minister and spoke to Miss Walker, on behalf of a friend, to see if Mr. Stevens would speak at an event opening the offices of Korn Ferry International in Canada. Mr. Stevens agreed to do so.

On August 13, 1985, the Department of External Affairs sent another telex to the Canadian embassy in Seoul, inquiring, among other things, if the president of the Hanil Bank would be able to meet the minister. Arrangements for this meeting were ultimately concluded by the Canadian embassy in Seoul.

Mr. Stevens testified that it was customary to select banks to visit on occasions such as his trip to South Korea because banks had a focused reaction to a country's economic climate and a good grasp of its problems and the steps necessary to ameliorate them. The Hanil Bank, however, was the only Korean bank visited on this trip, despite the apparent eagerness of other banks to receive such courtesy calls. Mr. Stevens testified that he chose the Hanil Bank because it was known to him and because no one had any particular objection to it.

As on many similar occasions, a delegation of representatives from the private sector accompanied the minister on his trip. Among the six businessmen joining Mr. Stevens — some of them senior executives of large Canadian or multinational corporations — were Mr. Ted Rowe, Mr. John Lamb, and Mr. Remo Cigagna.

Although Mr. Stevens personally extended formal invitations to all six individuals, the selection by him of Ted Rowe and Remo Cigagna was on a "personal basis," as opposed to a departmental recommendation (Transcript, vol. 73, p. 12,673). Remo Cigagna, who had become a director of de Havilland Aircraft on the recommendation of Mr. Stevens, was the president of the York-Peel Progressive Conservative Association. Mr. Rowe testified that he became involved when he received a call from Mr. Phil Evershed, the minister's executive assistant, asking if he would like to accompany the minister on his trip to Korea and inquiring if he could suggest other businessmen who might wish to be included. Mr. Rowe, who promptly indicated his interest, recommended John Lamb, owner and president of Eastern Hydraulics. Eastern Hydraulics is a company that imports, assembles, and distributes hydraulic motors and pumps. The company was also involved in the export business and during this period had shipped products worth approximately $1.5 million to Daiwoo, a large Korean corporation in Seoul.

Mr. Lamb is also a neighbour and a business associate of Mr. Rowe. Some time in the early spring of 1985, Mr. Rowe, still active as the president of York Centre, set up a company with John Lamb called Eastern Impex. This corporation is 60 percent owned by Mr. Lamb, 10 percent by Mr. Rowe, 10 percent by Mrs. Noreen Stevens, and 20 percent by York Centre. The company was established with a view to becoming involved in the import and export business. It is, however, largely a shell corporation with no established business. Ted Rowe testified that although the company had no ongoing business, it had sought out certain opportunities, including representing the Lang Tannery of Kitchener, Ontario, on the Korean visit, with the aim of selling their "blued hides" to Korean shoe manufacturers.

In addition to his association with John Lamb through Eastern Impex, Mr. Rowe also worked with Jems Manufacturing, a wholly owned subsidiary of Eastern Hydraulics that was involved in the marketing of plastic and vinyl components. Since the spring of 1985, approximately one-third of Mr. Rowe's time had been devoted to the Eastern group of companies.

Mr. Rowe testified that his purpose in going to Korea was to promote the interests of all three companies: Eastern Hydraulics, Eastern Impex, and Jems. Both Mr. Lamb and Mr. Rowe indicated to DRIE officials that they were interested in visiting manufacturers of electric motors to further the business of Eastern Hydraulics in importing light-duty hydraulic equipment. Mr. Rowe formally went as a representative of Jems to look at the wire business. Upon his return he was able to use the knowledge gained to put Jems into full production. His trip was paid one-half under the federal government's program for export market development and one-half by Jems.

The meeting at the Hanil Bank was scheduled for 4:30 p.m. on Tuesday, August 27, 1985. Some time on Monday, August 26, the Canadian ambassador was informed that the president of the Hanil Bank could not be available. Nevertheless, the visit went ahead as scheduled.

Mr. Rowe, whose itinerary was set at the time of his arrival in South Korea, was also scheduled to attend this meeting. He testified that he visited the Hanil Bank because it was one of York Centre's bankers, as well as out of a general interest in visiting a financial institution. He further testified that although the visit was scheduled, his decision to attend the meeting that afternoon was in part fortuitous because he was principally interested in visiting a factory on that day; he went along merely because he had returned to the hotel in time.

Mrs. Stevens attended the Hanil Bank meeting at her husband's invitation. As Mr. Stevens was about to leave for the visit, he asked his wife if she would like to join him and the others. Mr. Stevens testified that had she not taken up the offer, she would have remained in the hotel room.

The meeting at the Hanil Bank was brief, lasting about 20 minutes, and included on the Canadian side the minister, Mrs. Stevens, Ambassador Donald Campbell, Mr. Rowe, Mr. Kuk (a Korean-Canadian businessman), and Mr. David Beattie (a member of the minister's staff). The bank was represented by its executive vice-president as well as a member of the management committee.

Ambassador Campbell, who made the introductions, introduced Mr. Rowe as the president of York Centre and Mrs. Stevens as the minister's wife. Although Mr. Rowe testified that he believed the bank officials were aware that he was coming to the meeting, the ambassador testified that to his knowledge the bank would not have had advance notice of Mr. Rowe's presence. Ambassador Campbell believed that the embassy would have indicated only that Mr. Stevens and the ambassador were attending, possibly with other unspecified members of the delegation. As a result, the only information the bank was likely to have received about Mr. Rowe came from the ambassador's introduction.

The discussion at the meeting was largely by way of a monologue by Mr. Stevens. He explained the general objectives and purposes of the visit and spoke of Canada's interest in a deeper and more sophisticated economic and commercial relationship with South Korea that would go beyond the traditional trading relationship, which was starting to come into severe imbalance. Mr. Stevens also commented on the Canadian interest in joint ventures, in the establishment of Korean companies in Canada, and in the prospect of Korean and Canadian firms entering into collaborative endeavours.

At the meeting Mr. Stevens observed that, given his government's investment policies, the Hanil Bank was well placed to participate in these ventures. Ambassador Campbell testified that Mr. Stevens disclosed that a memorandum of understanding (MOU) was about to be signed by Hyundai and the Canadian government, which contemplated the establishment of an assembly plant in Canada. In this context, Mr. Campbell testified, Mr. Stevens also commented that he was aware that the Hanil Bank had a banking relationship with Hyundai.

The remainder of the meeting was devoted to the minister's comments on entrepreneurial immigration. He explained the Canadian government's policy of promoting entrepreneurial immigrants to Canada. It was Mr. Stevens' position that people coming to Canada from South Korea would need the services of a bank particularly to assist them in developing viable business plans in Canada. Mr. Stevens pointed out that, by virtue of its establishment in both Canada and South Korea, the Hanil Bank would be well suited to play a role in this program. Ambassador Campbell participated in the discussion, since the embassy had been working intensively for approximately six months to deliver the entrepreneurial immigration program. Neither Mr. Rowe nor Mrs. Stevens contributed to any part of the discussion, and there was no mention of York Centre business.

While testifying, Mr. Stevens denied that Mr. Rowe and Mr. Cigagna were brought to Korea on a "personal basis" (Transcript, vol. 73, pp. 12,673–75). Mr. Stevens also denied that the presence of Mr. Rowe and Mrs. Stevens at the bank was the subject of any preconceived plan. Further, with regard to the meeting at the bank, Mr. Stevens testified that he had no recollection of telling the vice-president of the bank that the MOU with Hyundai was about to be signed. Mr. Stevens conceded that on no other occasion during the time he was minister did he, Ted Rowe, and Noreen Stevens meet with a creditor bank of York Centre.

Several months later, in early January 1986, Arnold Denton spoke with both Sinclair Stevens and Shirley Walker about the government's interest in entrepreneurial immigration. Specifically, Mr. Stevens was expressing the view that there ought to be a role played by foreign banks, such as Hanil. Mr. Stevens wanted to establish contact people at the Hanil Bank who might be interested. Mr. Denton provided both his own name as well as the name of a Hanil employee in Vancouver. As a result of this conversation, Mr. Denton spoke to the president of Hanil Bank Canada and several of his colleagues. This is the first time Mr. Denton raised the matter of entrepreneurial immigration with any of the Hanil employees in Canada.

Conclusions

I find as a fact that in August 1985 Mr. Stevens was aware of the Hanil loan to Gill. Mr. Stevens had negotiated this loan through Arnold Denton in 1983 and, according to Mr. Denton, dealt with Hanil Bank in matters relating to the loan up until he entered government in September 1984. Further, Mr. Stevens was in possession of the March 31, 1985, Gill financial statement, dated June 14, 1985, marked "DRAFT FOR DISCUSSION." In this statement, there is a reference to "*the* bank loan" as well as to a reduction in bank indebtedness from $1.1 million in 1984 to $900,000 in 1985. This is of course a reference to the Hanil loan. These circumstances, when coupled with Mr. Stevens' general involvement in York Centre business, can only lead to the conclusion that Mr. Stevens was aware of the Hanil credit facility.

I also find as a fact that the Gill loan, although the only outstanding Hanil Bank loan of the York Centre group of companies at the time of the minister's visit to South Korea, was in serious difficulty. It is obvious that Gill had trouble maintaining the loan within the required margin because of the dramatic decline in the value of the Class A York Centre shares that had been pledged as collateral. Even with the additional shares pledged, coupled with the $100,000 paydown in August 1985, the loan was undermargined.

Further, these additional shares were not in fact made available from the assets of Gill but rather were shares purchased by Stevens Securities and Georgian Equity from proceeds they received from the sale of Ontario Hydro bonds. It appears evident from these transactions, as well as from the general state of affairs surrounding the companies in July and August 1985, that the bonds were sold to pay down general indebtedness and to maintain the Gill loan, after attempts to use them in financing had failed. Obviously, in order to sell the bonds it was necessary to repay the YCPL loan for which the bonds were pledged as collateral. It was not the case, as Arnold Denton was led to believe, that York Centre had found a more lucrative method of using the bonds as a vehicle for financing.

Mr. Stevens, who was aware of his wife's efforts to use the bonds as a vehicle for financing and of the subsequent sale of the bonds when these efforts failed, was aware of the precarious financial condition of the company and also the usefulness of shoring up Gill's credit with Hanil and maintaining the bank's goodwill.

Further, I find that both Mr. Denton and Mr. Stevens were aware of the importance attached by the bank, as a matter of Korean custom, to Mr. Stevens' social and political position. Mr. Denton's constant references to Mr. Stevens as an important, influential, and politically connected person were all an expression of this custom. Mr. Stevens, who knew Mr. Denton well and had discussed Korean customs before travelling to Korea, was aware of this, as well as of the enthusiasm of Korean banks for visits of this kind.

I find as a fact that Mr. Stevens, knowing that the credit facility with the Hanil Bank was approved and directed from Seoul, chose to visit the Hanil Bank to impress upon the executives of the bank his own importance as a government figure. Even Mr. Stevens' mention of the MOU about to be signed by Hyundai, as described by Ambassador Campbell whose evidence I accept, was designed to underline Mr. Stevens' personal importance in assisting Korean industry to expand into Canada. I find he did this in order to ensure that the Gill loan would not be placed under serious pressure. Further, I find that this conclusion is supported by entries in Shirley Walker's diary, as early as February 1985, which suggest the willingness of both York Centre and Mr. Denton to call upon Mr. Stevens to pressure the Hanil Bank in South Korea to provide the flexibility in the credit facilities required by York Centre.

I find as a fact that Mr. Rowe's inclusion in the group visiting the Hanil Bank was not fortuitous but was planned, and then finalized at the time his schedule was worked out upon his arrival in Korea. Mr. Rowe's control of the York Centre group of companies was obviously a matter of some concern to the Hanil Bank. An examination of the internal records of the bank, coupled with certain statements made by Mr. Denton in his testimony, point to the bank's desire to understand the workings of the blind trust, as well as its desire to be reassured as late as May 1985 that Mr. Stevens was still the owner of the majority interest in Gill. I therefore find that Mr. Rowe's presence at the bank was designed to draw to the bank's attention the connection between the minister, Mr. Rowe, and York Centre Corporation.

I find that the visit to the Hanil Bank in Seoul, Korea, in August, 1985, was another instance of Mr. Stevens mingling private interests with the performance of his public duties and responsibilities. I also find that the Hanil Bank credit facility to Gill, Mr. Stevens' shares of which were placed in the blind trust, was a private economic interest sufficient to influence the exercise of his public duties and responsibilities in regard to the Hanil Bank. In his visit to the Hanil Bank in Korea and subsequent dealings with Hanil Bank Canada regarding entrepreneurial immigration, I find that Mr. Stevens was in a position of real conflict of interest.

Chapter 24

The Allegations Relating to Compliance with the Guidelines, Code, and Letter

This section examines the fifth and final category of allegations: the allegations of non-compliance with the guidelines and code. There were two basic allegations: first, that the required distance between the minister and his assets was not in fact established, that is, that the blind trust was not blind; secondly, that in any event a blind trust was inappropriate in these circumstances, that is, that a blind trust does not work and should not be used for a "family business." The first allegation is an allegation of impropriety and, as such, will be addressed in detail below. The second is in essence a criticism of the code and its operation, and I shall deal with it in Part Five of the report.

The Blind Trust Was Not Blind

This allegation essentially was that the blind trust was not blind for two reasons: because the minister continued to have knowledge about what was in the trust, and because his wife was involved in managing the trust assets.

I have concluded earlier that Mr. Stevens continued to have knowledge about, and was involved in, the companies' affairs; and as well that his wife was indeed involved in their management. (I address the issue of what the trust assets were later in this chapter.) What I must now decide are the legal implications of this knowledge and involvement and the effect this had on the blind trust. This involves a consideration of the nature and purpose of a blind trust.

A blind trust is a transfer of property to a trustee that is meant to be as much like an arm's length sale of the property as possible. Both the guidelines and code require ministers to divest certain assets, usually either by selling them in such an arm's length sale or by transferring them into one of several kinds of trusts, among which blind trusts are included. The result of either a sale or a transfer to a blind trust is intended to be the same. Just as a minister selling an asset no longer controls or influences that asset, so should he or she no longer control or influence it once the asset is transferred into a blind trust. There is a further expectation when a minister's assets are transferred to a blind trust, which is inherent in the word "blind": the minister is required not to know what is in the trust, or, for the most part, anything about its operation or management. The minister may know the aggregate value of what is in the trust, may receive the information necessary, for example, to prepare an income tax return, and, under the code, may be provided with "information that is required by law to be filed" (Schedule, section 1(a)). However, these are exceptions to make the trust workable. The overriding aim remains that a minister not be aware of what is in the trust.

The reason for this is obvious. The system currently in place requires that assets likely to pose problems of conflict of interest be divested. Strict limits on a minister's knowledge of them are established in order to eliminate or minimize the possibility for situations of real conflict of interest. If the minister does not know what is owned, that is, the existence of a specific private economic interest, then real conflicts of interest can be avoided.

It is implicit in what I have just said about the purpose of a blind trust, and in the strict limits the guidelines and code place on what may be communicated by the trustee of a blind trust to a minister, that the minister is bound to avoid soliciting or obtaining information pertaining to the assets, let alone becoming actively involved with them.

It follows from what I have said about the duties of the trustee vis-à-vis communication with a minister about assets in a blind trust, and about a minister's duty not to become informed or involved, that the purpose of a blind trust would be equally frustrated if the information came to the minister from third parties. Thus, were a spouse or a colleague to communicate with a minister about his or her trust assets, the trust would no longer be blind. Less obvious perhaps, but no less real, is the difficulty that would ensue on the level of appearance if someone closely associated with the minister were to remain involved with the management of the trust assets, because of the assumption that communication with the minister would occur. A spouse of course is an obvious example of someone closely associated with a minister. The guidelines and code recognize this problem in another form with provisions forbidding ministers from transferring to a spouse assets that must be divested. Just as this kind of transfer is deemed inappropriate even if at fair market value, it is also inappropriate for a minister to arrange for, or accede to, the management by a spouse of the trust assets. Public confidence in the blind trust is destroyed by such an arrangement.

There were suggestions that the trust assets consisted only of Gill shares and that dealings with assets controlled or significantly influenced by this shareholding might still be proper. The evidence showed that Gill and various other companies were operated together as the group that I have described as the York Centre group of companies, a group with strong ownership, transactional, and operating linkages controlled by Mr. Stevens through his ownership of a majority of Gill shares. Although Mr. Stevens formally placed only his Gill shares (and a small RRSP) into the blind trust, it is necessary to view all of Gill's direct and indirect assets, that is, the entire York Centre group of companies, as part of the trust assets in order to give reasonable meaning to the blind trust. I note that the trustee, and even Mr. Stevens shortly before resigning, took this view as well.

It remains for me now to state my view about the effect that Mr. and Mrs. Stevens' activities in the York Centre group of companies had on the blind trust.

From my earlier finding about these activities, the conclusions are clear. The allegation is well founded. There was no "blind" trust because Mr. Stevens knew about and was involved with the York Centre companies and thus with the trust assets, because his wife and his special assistant told him about the trust assets, and because his wife participated in joint management of the assets with him.

This concludes my observations on the allegations regarding Mr. Stevens' compliance. However, I should not leave the subject of compliance and the blind trust without making some observations on the role the trustee played in ensuring its effectiveness. In a very limited sense, the trustee behaved properly: it did not inform Mr. Stevens at any time of matters concerning the trust assets and was aware of certain of its basic duties, such as not permitting him to receive funds in a form that would enable him to identify the trust assets.

However, for all practical purposes the trustee was inactive. It took no part in the management of the trust assets. Those responsible for its administration were initially unaware of what Gill was or what its assets were, learning that Gill had some relationship with York Centre and Canalands only as a result of a letter written by Miss Walker on December 14, 1984. Although as a result the trustee then took the view that York Centre's interest in Canalands was indirectly one of the trust assets, it did not inquire further to see if there were other such assets. The trustee did not seek or receive notices or information in its capacity as Gill's majority shareholder. It took part in no transactions or dealings involving the trust assets. It attended no meetings. It did not know about the substantial decline in the value of York Centre shares. Although empowered to become represented on the boards of both Gill and York Centre, and control the activities of management, it did neither. It did not know about Gill's payment of substantial capital dividends to Mr. Stevens and others, or about the subsequent loan of the dividend amounts back to Gill. Indeed, had the trustee wished to communicate improperly to Mr. Stevens it would not have known what to say.

It is clear that it was never the intention of the authors of the guidelines or code that a blind trust would operate in this way. In leaving the company's affairs entirely in the hands of existing management and failing to keep abreast of its fortunes, the trustee exhibited indifference both to the possibility of other channels of communication to the settlor being open and to whether the company's affairs might provide a motivation for communication to occur.

The Blind Trust Was Not Appropriate for a Family Business

The allegation here was that a blind trust was not an appropriate instrument for the "divestment" of what was in effect a family firm. Mr. Stevens, of course, did nothing improper in placing his Gill shares in a blind trust. This course of action was permitted by the guidelines and code. This allegation is really a criticism of the provisions in the guidelines and code that allow a blind trust option for family-held firms. I shall address the general question of what assets, if any, are appropriate for a blind trust in Part Five of my report.

Part Five

Conclusions and Recommendations

This part contains my final observations and conclusions. I first describe the inquiry process, the procedures that were employed, and the roles and responsibilities of Commission counsel. I then summarize my conclusions about the conflict of interest allegations as they concerned Mr. Stevens. In the final chapter, I provide some observations on the lessons that were learned in this Inquiry and I set out my recommendations for reform.

Chapter 25

The Inquiry Process

The Commission began its work in May 1986. One of my first tasks was to retain as Commission counsel, David W. Scott, Q.C., and as associate Commission counsel, Edward Belobaba and Marlys Edwardh. Thereafter, Peat Marwick Lindquist Holmes was engaged as forensic accountant, and Detective Inspector Douglas Ormsby of the Ontario Provincial Police was seconded to the Commission to assist as an investigator. Subsequently, a research staff of three lawyers and three law students was brought together, primarily to assist in the examination and selection of relevant documents.

Commission counsel began their investigation by interviewing many individuals, collecting and examining thousands of documents, identifying a list of witnesses, and preparing for their ultimate examinations during the hearing phase. During this phase, my subpoena powers were used extensively to compel the production of documents and subsequently the attendance of witnesses. The investigation also continued during the hearings as further information was uncovered or individuals made themselves available for interviewing.

On June 9, 1986, I caused a notice to be published nationwide in various newspapers announcing that hearings were to be convened on June 16, 1986, for the purpose of considering which individuals, firms, corporations, or other bodies ought to be accorded standing to participate in public hearings; and of receiving any submissions that interested parties might wish to make with respect to the procedures to be adopted.

On the first day of the hearings, June 16, 1986, standing was granted to eight parties; subsequently, when the hearings resumed on July 14, 1986, four others were granted standing. Thereafter, the Commission sat for a total of 83 days of hearings and received the testimony of 93 witnesses. During the hearings, 232 public exhibits were filed. These exhibits were composed of almost 25,000 pages of documents. The transcripts cover some 14,788 pages of text. The proceedings, almost all of which were open to the public, were, with my permission, also broadcast on cable television. The hearings phase of the Commission ended on February 20, 1987, after I had received extensive written submissions and heard oral argument from those who wished to make it.

It was apparent from the start that the allegations of misconduct were of a serious nature, affecting not only Mr. Stevens but others in the community as well. Therefore, the following steps were taken to ensure procedural fairness:

- On each issue raised there was full and timely disclosure of evidence to the affected parties.
- Any party wishing to call a witness either had a subpoena made available to compel the attendance of the witness or Commission counsel interviewed the witness and called him or her to give evidence before the Commission.
- Almost without exception, documents about which a witness was to be questioned were available in advance to that witness as well as to other interested parties.
- On occasion, an adjournment was sought to permit counsel for a party an opportunity to inspect documents further or to permit more time for preparation. Such adjournments were always granted.
- Each witness was made available for full and sometimes far-reaching cross-examination by any of the interested parties.
- Almost all witnesses who gave evidence before me were represented by counsel, and these counsel were given the right to make objections and to ask questions of their clients.

Finally, in reviewing the evidence placed before the Commission, weighing and considering it in relation to the issues, I have borne in mind my obligation to make findings only when there has been a fair and reasonable preponderance of credible evidence.

Although I felt it essential to ensure that procedural fairness was observed, I also recognized that a commission of inquiry is neither a civil nor a criminal trial. Rather, it is a proceeding that is investigatory in nature. A commission of inquiry may investigate matters ranging from broad social and economic questions, such as those raised in the Mackenzie Valley Pipeline Inquiry, to more narrowly circumscribed allegations of misconduct regarding a specific individual. In either case, the hearings are the most important vehicle for conducting the investigation, as it is through this process that most of the evidence is gathered. This investigatory function can produce tension between traditional notions of due process for persons whose conduct is being investigated and the inquiry process itself, which, unlike a trial, does not commence with a discovery process whereby parties to an action have full disclosure of their opponents' case prior to trial. As a result, a commission of inquiry proceeds before the evidence is marshalled, before the issues are clearly delineated, and even before the course of the inquiry has been clearly charted.

Further, the absence of legal consequences — there are no civil or criminal penalties attached to the findings I make or the conclusions set out in the report — underscores the investigatory function of a commission of inquiry. Even though I have found that Mr. Stevens was in a position of conflict of interest, such a finding is a matter to be dealt with by the prime minister, who is ultimately responsible for the code of conduct governing his ministers. A true understanding of the inquiry process therefore must reflect the need to balance considerations of due process with the investigation required of an inquiry.

This tension raises the question of the proper role of Commission counsel in such proceedings. I am satisfied that his or her task is to ensure that all the evidence, all the issues, and all possible theories are brought forward to the Commission. In this context, counsel's obligation is most often described as the duty to be impartial.

During the course of this Inquiry, some parties accused Commission counsel of being too adversarial. In particular, counsel for Mr. and Mrs. Stevens as well as counsel for Miss Walker made this accusation. Their complaint lay with the manner in which certain cross-examinations were conducted as well as Commission counsel's submission that certain inferences, adverse to their clients, should be drawn from the evidence. In assessing this criticism, it is significant that no one complained that all evidence for or against Mr. Stevens was not called by Commission counsel. There can be no suggestion that the selection of witnesses was not impartial in this regard. Further, all documents gathered together and presented by Commission counsel were made available to the parties, whose only complaint about the documentation was that it was too voluminous and comprehensive.

In light of the foregoing, the assertion that Commission counsel was too adversarial must be examined with care. In this Inquiry, although numerous parties were granted standing, no one appeared who was adverse in interest to Mr. Stevens. In these circumstances there was no one to ask the "hard questions" in a probing and thoughtful manner unless this task was undertaken by Commission counsel. This situation was similar to the one faced by Mr. Justice Samuel Freedman in the Commission of Inquiry in the Matter of Wilson D. Parasiuk. In his report, Justice Freedman comments:

> Our litigation is conducted on the basis of the adversary system, the plaintiff and his counsel presenting one point of view, the defendant and his counsel presenting the other. That system has not escaped criticism, some of it valid, but as of today it continues to be the system which we employ. At the base of it is the right of cross-examination. That right is an essential instrument for the discovery of truth. What a witness may say under the friendly blandishments of counsel upholding his cause may be radically altered under the stern questioning of opposing counsel. Indeed, even if the same answers are given by the witness the manner in which they are given may be changed, to a degree causing the tribunal to lose confidence in the testimony of the witness. More than that. Sometimes the absence of cross-examination will result in important questions not being put to the witness. Their absence from the case may materially affect the result, often bringing about a miscarriage of justice.

> In the proceedings of this Commission the phenomenon of a one-sided presentation became early discernible. The witnesses and their counsel all seemed to be on the same side, the side of Parasiuk. . . . Our Commission of Inquiry confronted the danger of virtually only one side being heard.
>
> In that setting Mr. Raymond Flett, counsel of the Commission, determined to do what he could to plug the gap, at least in part. When Mr. Parasiuk took the witness stand Mr. Flett assumed the role of opposing counsel and subjected Parasiuk to a cross-examination that was vigorous, searching and intelligent. Mr. Parasiuk may have been taken by surprise by the turn of events, but the Commission is pleased to assert that he responded to the challenge with dignity and wisdom, and as one guided by the white light of truth.
>
> At the time of this event the Commission stated that Mr. Flett's course of conduct was in the best traditions of the Bar. The Commission repeats that assertion now, adding that regardless of the outcome all connected with the Inquiry must be happier that the other side was heard and not ignored. (pp. 9–10)

It was for this same purpose that Commission counsel in this Inquiry took on what appeared to some to be an adversarial posture. Such a posture was not a shedding of the duty of impartiality but, to the contrary, an essential aspect of that duty. It ensured full cross-examination of witnesses in circumstances where no other party had any interest in testing and challenging the evidence offered.

Commission counsel also properly discharged their duty in relation to their submissions. When all parties urged an interpretation of the evidence that advanced their clients' cause, it was Commission counsel's duty to point out to the Commission that other inferences could be drawn from the evidence and that these must be weighed and considered by me in the course of my deliberations. Further, on those occasions that Commission counsel urged that only one inference could be drawn from the evidence, they did so on the basis that in their view a preponderance of credible evidence left only one inference available to me.

Thus, Commission counsel's duty of impartiality is not inconsistent with taking an adversarial position when such a position is essential to ensuring that the Commission will arrive at the true facts. In this regard, I adopt the views of Mr. Justice J.H. Laycraft in the inquiry into Royal American Shows Inc. and Its Activities in Alberta, who in his report likened the duties of Commission counsel to those of a prosecutor in a criminal trial:

> In this investigatory process, the function of Commission Counsel is not to act as advocate for any particular person or party or to contend for or against any point of view. Counsel's duty is to place before the Commission all of the evidence available without regard to whom it favours, and to see that all persons affected are treated equally. He assists not only the Commission but all parties appearing before it to see that their rights are observed and that the evidence is

> fairly adduced. After consideration of the general issues before the Inquiry as they were then understood to be, I considered that the duties of Commission Counsel are not consistent [sic] with those of a prosecutor and, in fact, are virtually identical.
>
> The role of a Crown Prosecutor in England and in Canada is not to struggle at all events for conviction. His duty is as an officer of the court to ensure that all evidence, both favourable and unfavourable to the accused, is put before the court. This has been repeatedly stated in courts here and abroad.
>
> In the Supreme Court of Canada in *Boucher* v. *The Queen* 1955 S.C.R. 16, . . . Rand, J. said at Page 23:
>
> > "It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings."
>
> In my view, this definition of the role of the Crown Prosecutor is also an apt description of the duty of Commission Counsel in an Inquiry such as this one. (pp. A 15–17)

In considering the discharge of Commission counsel's duty in this Inquiry, I am satisfied that Commission counsel conducted themselves, at all times, in the best traditions of the Bar and in accordance with their obligation to leave no stone unturned in the pursuit of truth.

Chapter 26

Conclusions about Mr. Stevens' Conflict of Interest

This chapter summarizes my principal conclusions under each of the five broad categories of allegations that were reviewed above. Before turning to these conclusions, however, I shall deal briefly with certain allegations of conflict of interest that were not pursued in this Inquiry.

Allegations Not Pursued in this Inquiry

The first allegation related to Mr. Stevens' conduct between March 26 and May 12, 1986, that is, in the period between the first major news story and the date of his resignation from the cabinet. It was alleged by certain members of Parliament that any dealings that Mr. Stevens had as minister involving Magna, Burns Fry, Dominion Securities, Gordon Capital, or Hyundai following the news reports of March 26, 1986 (about Hyundai) and of April 29, 1986 (about the others), and his then clear knowledge of the $2.62 million loan and the York Centre search for financing, would be conflicts of interest and would remain so until the date of the minister's resignation. This category of allegations can be disposed of quite briefly. Regarding Hyundai, I have found in this report that Mr. Stevens was not in a conflict of interest in his dealings thereto. I also note that in any event Mr. Stevens had no further dealings with Hyundai following the March 26 news story. Thus there could have been no subsequent occasions for conflict of interest. As for the Magna and Bay Street allegations, I have already found that Mr. Stevens had knowledge of the $2.62 million loan and York Centre's involvement with Burns Fry, Dominion Securities, and Gordon Capital well before the publication of these allegations in the media on April 29. It thus goes without saying that any further ministerial dealings that Mr. Stevens had with Magna, or with Burns Fry, Dominion Securities, or Gordon Capital, following these news reports could have amounted to further conflicts of interest. I find, however, that between April 29 and May 12, 1986, there were no such dealings.

There were two other conflict of interest allegations that were not pursued in this Inquiry. Both were made by members of Parliament and recorded in Hansard. The first related to de Havilland Aircraft. The allegation was that de Havilland was sold for "a ridiculously low price." The second related to the closing of a Quebec shipyard. The allegation was that there was a conflict of interest in Mr. Stevens' decision to place the chairman of one shipyard in charge of planning the closure of another shipyard without first advising the latter. As things turned out, counsel for the members of Parliament in question advised Commission counsel in writing that neither of these allegations in fact had any relation to any alleged conflict of interest on the part of Mr. Stevens. Hence, the allegations were not pursued further.

General Conclusions about Conflict of Interest

I am now in a position to summarize my general conclusions with regard to the five broad categories of allegations that were reviewed in this part of the report. For ease of understanding, I shall set out my conclusions under each of the five categories that were reviewed.

The Allegations of Conflict of Interest Relating to Magna

These allegations have been made out. I have found that from early April 1985, when Mr. Stevens acquired knowledge of Mrs. Stevens' negotiations with Mr. Anton Czapka, until his resignation from public office, all of his dealings with Magna in his capacity as minister of DRIE and minister responsible for CDIC were occasions of real conflict of interest. In particular, I have found that Mr. Stevens was in a position of real conflict of interest in:

- personally approving the applications for federal assistance to Multimatic Inc., Master Precision, and Integram on April 17, 1985, at a meeting of the Economic Development Board (these applications totalled $5,033,000 in federal assistance);
- personally approving Magna's application for $10.2 million for the Class A Stamping plant on April 17, 1985, subject to approval by Treasury Board and contingent upon an equivalent provincial contribution;
- pressing for and authorizing the presentation to the Treasury Board of the application for federal assistance for the Class A Stamping plant in June 1985;
- entering into a cancellation agreement with Magna and recommending to cabinet an amendment to the Enterprise Development Regulations enabling the cancellation of the Polyrim stock option in July and August 1985;
- becoming involved in January 1986 in a meeting to consider Magna's proposal concerning the privatization of Canadair; and

- decisions made, directions given, and agreements entered into, leading to the $64.2 million in federal assistance ultimately recommended for approval for the Cape Breton project in April 1986.

The Allegations Relating to CDIC and Bay Street

These allegations have been made out in part. I have found that Mr. Stevens in his capacity as minister responsible for CDIC was in a position of real conflict of interest with regard to:

- the appointment in October 1984 of Mr. Trevor Eyton as a CDIC director;
- the approval in March 1985 of the financial advisory contracts awarded by CDIC to Burns Fry and Dominion Securities;
- the appointment in late April or early May 1985 of Gordon Capital as a financial adviser to the federal government on the CDC share sale.

I have found that with regard to the other allegations relating to "Brascan," and in particular to Mr. Stevens' involvement in a "reversal of policy" affecting Noranda and Eldorado, or to his involvement in the CDC share sale, Mr. Stevens was not in a conflict of interest position.

The Allegations Relating to Hyundai

These allegations have not been made out. I have found that the allegations relating to Mr. Stevens' dealings with Hyundai in his capacity as minister responsible for Investment Canada were unfounded and that Mr. Stevens was not in a position of conflict of interest.

The Allegations Relating to the Mingling of Private and Public Business

These allegations have been made out. I have found that Mr. Stevens mingled his private interest with his public duties while he was a minister of the Crown. Mr. Stevens used his public office for private advantage and mixed government and private business on at least five occasions:

- in his dealings with the Chase Manhattan officials;
- in his meeting with Mr. Angus Dunn of Morgan Grenfell;
- in his dealings with Mr. Tom Kierans of McLeod Young Weir;
- in his telephone call to Mr. Ken Leung of Olympia & York; and
- in his visit to the Hanil Bank in Seoul, South Korea.

On each of these occasions, I have found that he was in a position of real conflict of interest.

The Allegations Relating to Non-Compliance with the Guidelines, Code, and Letter

These allegations have been made out. I have found that the blind trust was not in fact blind. Mr. Stevens remained knowledgeable about and involved with the York Centre companies and thus with the very assets that were in the blind trust. Both Mrs. Stevens and Miss Walker conveyed information to Mr. Stevens about the assets in the blind trust and, with Mr. Stevens, remained involved in their management.

In sum, Mr. Stevens' conduct during his tenure as a minister of the Crown demonstrated a complete disregard for the requirements of the guidelines and code and the standard of conduct that is expected of public office holders.

Chapter 27

Recommendations for Reform

This Inquiry has provided a unique opportunity to examine some of the practical workings of the conflict of interest regime that is in place at present for federal cabinet ministers. Many of the provisions of the guidelines (Appendix E), code (Appendix F), and letter (Appendix H) were subjected to examination, and their strengths and weaknesses were reviewed. It is in my view important that the lessons that were learned in the course of this Inquiry be recorded, and I therefore offer some final observations and suggestions for reform.

This was not the first inquiry to explore the topic of conflict of interest. The matter has been studied at both the federal and provincial levels. The leading federal study is *Ethical Conduct in the Public Sector: Report of the Task Force on Conflict of Interest* (1984). Known as the Starr-Sharp Report, it provided a comprehensive and sophisticated review of existing federal and provincial conflict of interest regimes, and set out proposals for reform.

There have also been a number of provincial studies arising out of inquiries into allegations of conflict of interest on the part of provincial cabinet ministers. I note in particular in Manitoba, Mr. Justice Freedman's Report of the Commission of Inquiry in the Matter of Wilson D. Parasiuk (1986), and in Ontario, the *Report of the Standing Committee on Public Accounts on the Allegation of Conflict of Interest Concerning Elinor Caplan* (1986). A recent provincial study which I found particularly useful was the study conducted by the Honourable John B. Aird, former lieutenant-governor of Ontario, *Report on Ministerial Compliance with the Conflict of Interest Guidelines* (1986). The Aird Report recommended a number of important reforms, some of which have been adopted by the Ontario government in the Members' Standards of Office Act, 1986, which received first reading on November 27, 1986.

The reform of conflict of interest codes has also been studied abroad. A number of recent studies describe experiences in the United Kingdom and in Australia. I have also reviewed with considerable interest the current approaches to conflict of interest at the federal level in the United States. These studies and reports have provided a useful context for my own conclusions about the directions for reform that the federal government might pursue.

It is important to emphasize that what follows is not a comprehensive study. Nor is it a detailed blueprint for legislative reform. What follows are my own views on the fundamental lessons learned over the course of this Inquiry and my suggestions for reform.

My suggestions will address the four basic conflict of interest issues affecting members of cabinet that figured most prominently over the many months of public hearing.

- Disclosure and Divestment: the extent to which disclosure should be required; the appropriate vehicles for divestment; and the role, if any, of the blind trust.
- Recusal: the need to recognize a continuing obligation on the part of public office holders to declare their interests and withdraw from exercising certain duties or responsibilities (or recuse) whenever necessary.
- Spouses: the question of spousal compliance, and in particular whether spouses should be required to disclose their financial interests and activities.
- The Assistant Deputy Registrar General (ADRG): the reform of the office of the ADRG and the kinds of functions that a government ethics office should perform in principle.

I shall deal with each of these points in turn.

Disclosure, Divestment, and the Role of the Blind Trust

Requirements under the Present Code

As drafted, the Conflict of Interest and Post-Employment Code for Public Office Holders (Appendix F) sets out detailed but confusing requirements for disclosure and divestment. I have already analyzed these requirements in detail in Chapter 2. Nonetheless, a brief summary here may be useful. It will be recalled that the code requires adherence to certain "compliance measures" (not defined) and sets out four "methods of compliance": avoidance, confidential report, public declaration, and divestment. The appropriate compliance method is determined in large part by the type and value of the assets involved. The code classifies assets in three different ways: exempt, declarable, and controlled.

Exempt assets are assets and interests that are not of a commercial character but are for the private use of the public office holder and his or her family. Exempt assets are defined to include such things as private residences, automobiles, household goods, and other personal effects. Assets that are primarily of a private or personal nature are exempted from confidential report or public declaration.

Assets that are not exempt are of two types: declarable assets and controlled assets. The code requires the public office holder to make a "confidential report" to the ADRG of all such non-exempt assets and all direct and contingent liabilities. The non-exempt assets are then classified as either declarable or controlled. Declarable assets are "assets that are not controlled" and they include:

(a) interests in family businesses and in companies that are of a local character, do not contract with the government and do not own or control shares of public companies, other than incidentally, and whose stocks and shares are not traded publicly;
(b) farms under commercial operation;
(c) real property that is not an exempt asset . . . ; and
(d) assets that are beneficially owned, that are not exempt assets . . . and that are administered at arm's length.

Declarable assets can be disclosed in a public declaration.

Controlled assets are defined as "assets that could be directly or indirectly affected as to value by Government decisions or policy." Controlled assets include:

(a) publicly traded securities of corporations and foreign governments;
(b) self-administered Registered Retirement Savings Plans, except when exclusively composed of exempt assets . . . ; and
(c) commodities, futures and foreign currencies held or traded for speculative purposes.

Controlled assets do not have to be disclosed, but they must be divested.

Controlled assets are usually divested either by selling them in an arm's length transaction, or by making them subject to a trust. Three kinds of trust arrangements are suggested: the blind trust, the frozen trust, and the retention trust. The frozen and retention trusts simply freeze the existing assets and transfer managerial responsibilities to the trustee. Only the blind trust provides for the possibility of complete divestment and true blindness.

Once these compliance measures have been completed, two documents must be filed in the Public Registry. The first is the public declaration, which sets out the declarable assets. The second is a summary statement, which sets out the methods of compliance used by the public office holder to comply with the code.

Problems with the Present Code

There are in my view four fundamental problems with the present code's disclosure and divestment provisions: first, they fail to provide for full disclosure; secondly, even as a system of partial disclosure and divestment, the provisions are flawed and inconsistent; thirdly, the provisions for blind trusts do not meet the objective of blindness; fourthly, although the provisions call for judgments on the likelihood of a conflict of interest arising, there is no definition of conflict of interest. Let me explain what I mean by each of these criticisms.

Failure to Provide for Full Disclosure

In my view the code does not provide an adequate public disclosure system, and in my suggestions for reform I shall develop my reasons for this view. Here I shall simply set out the present limits on disclosure. Although declarable assets must be divested or publicly disclosed, controlled assets need not be disclosed. Further, the ADRG is not able to assess all of a minister's assets to assist him or her in classifying them. Those assets that are exempt in a minister's opinion need not be disclosed confidentially to the ADRG. I note as a matter of interest that when the code came into force the ADRG himself advised ministers that it would be prudent to continue to disclose exempt assets precisely for these classification purposes.

As far as disclosure of activities and positions is concerned, the code requires a minister to disclose publicly only directorships and official positions. It is thus fair to say that the present code provides for a system of partial and uneven disclosure.

Flawed and Inconsistent Provisions

One of the principal problems with the current system of partial disclosure is the lack of workable criteria for deciding what has to be disclosed, how it has to be disclosed, or whether it has to be divested. Exempt assets are defined as "[a]ssets and interests for the private use of public office holders and their families and assets that are not of a commercial character." Controlled assets are defined broadly as "assets that could be directly or indirectly affected as to value by Government decisions or policy," and declarable assets as effectively those that are neither exempt nor controlled. I believe that the broad and open-ended nature of the definitions of exempt and controlled assets, although designed to achieve laudable purposes, may leave doubt about how an asset should be classified and whether it need be disclosed confidentially, disclosed publicly, or divested. This ambiguity is, of course, undesirable.

Further, the language of the code leaves the occasions and proper methods for divestiture in some doubt as well. One section of the code states that *all* controlled assets are to be divested except those determined by the ADRG to be of such minimal value as not to constitute any risk of conflict of interest; another section of the code, however, requires divestment "where continued ownership [of an asset] by the public office holder would constitute a real or potential conflict of interest." These sections are at odds, and the ADRG is given no guidance or indeed mandate to exercise the suggested flexibility and discretion.

What is a proper method of divestment is also not clear. In one section the code states that arm's length sale and trusts, the most common of which are set out in a schedule, are "usual." Elsewhere, arm's length sale or trusts are given as the two methods of compliance by divestment. The result is muddle and confusion.

Provisions for Blind Trust Do Not Ensure Blindness

A major problem arises from the fact that the trusts suggested in the schedule to the code, and especially the blind trust, appear to be available indiscriminately for *any* controlled asset. Given the highly elastic definition of controlled asset, it seems that almost any asset could be placed into a blind trust, including a family business, even though, realistically, such an asset would never be sold by the trustee and the blind trust would never become blind.

Indeed, it is this imprecision in the definitions in the present code and the predecessor guidelines that allowed Mr. Stevens to place what was effectively a family business into a blind trust, even though by any realistic measure the trust holding would never be divested and the blind trust would never be blind. I do not suggest for a moment that this imprecision in the definitions can excuse Mr. Stevens' conduct with regard to the assets in his blind trust or excuse his breaches of the conflict of interest code. The guidelines and code are quite explicit in their prohibition of involvement in management. What Mr. Stevens did was a clear violation of clearly worded provisions. Still, the fact that Gill and its holdings could satisfy the definition of a controlled asset and be placed into a so-called blind trust suggests that important questions relating to the role of the blind trust have neither been addressed nor resolved.

I shall set out later in this part my view on whether the blind trust should be retained at all.

No Definition of Conflict of Interest

I have noted earlier in the report the absence of a definition of conflict of interest. The omission is critical. Conflict of interest is discussed in more than a dozen provisions in the code but never once defined. Public office holders are required to arrange their private affairs and perform their official duties "in a manner that will prevent real, potential or apparent conflicts of interest from arising." But the key phrases are not defined.

I recognize that, for the vast majority of public office holders, conflict of interest has a common sense meaning that does not require extensive definition. The mingling of private and public business, for example, clearly involves a conflict of interest and is wrong by any measure. Some conflict of interest problems, however, are not as black and white. For the grey areas, which require subtle judgments, a clearly written and easily understood definition is needed. Both for reasons of information and education, and for ease of compliance, conflict of interest should be defined.

Public Disclosure as Cornerstone

In my view, public disclosure should be the cornerstone of a modern conflict of interest code. I recognize that the extent to which public office holders should make a public disclosure of private financial interests has been a matter of some debate both in Canada and abroad for a number of years. I am satisfied, however, that full public disclosure of public office holders' private financial interests and activities is the sensible direction for reform.

The point was made in the Aird Report: "full public disclosure of all economic interests and relationships is the strongest weapon in the arsenal of any conflict of interest regime" (p. 38). I agree. If modern conflict of interest codes are to ensure that public confidence and trust in the integrity, objectivity, and impartiality of government are conserved and enhanced, they must be premised on a philosophy of public disclosure. In addition to the individual effort that is expected on the part of public office holders to avoid conflicts of interest, public confidence in the integrity of its public officials requires a healthy measure of public vigilance. Public vigilance, however, depends upon reasonable access to information, first, about the fact that a public duty or responsibility of public office is being exercised, and, secondly, about the existence of any related private interest on the part of the public office holder. The first is normally within the public domain; the latter needs disclosure.

In my view, public confidence in the integrity of government can best be assured by a system that requires disclosure of the public office holder's private financial interests. Indeed, public disclosure requirements are increasingly commonplace. Most of the provinces already have in place laws or guidelines that require some form of public disclosure.

The actual disclosure requirement — the nature and extent of public disclosure, the kind of assets, interests, and activities that should be disclosed, and so on — should be set out simply and clearly. If definitions are to be used, they should be clearly worded and easily understood. If distinctions are to be drawn among classes of assets or activities, then the distinctions should be principled, plainly drafted, and, again, easily understood.

The suggestion that public disclosure must be a cornerstone philosophy for any modern conflict of interest regime does not mean that public office holders would have to bare their souls. Canadians place a high value on privacy. We recognize that public office holders have and deserve to have a private life. Thus, it would not offend the principle of public disclosure to allow public office holders the right to keep private those assets that are truly personal, such as place of residence, household goods and personal effects, automobiles, cash and saving deposits, RRSPs, and so forth. The assets that are exempt under the present code are the kinds of assets that would continue to remain exempt under a public disclosure regime.

All other financial interests — all sources of income, assets, liabilities, holdings and transactions in real or personal property — would have to be disclosed in a financial disclosure statement that would be filed in the Public Registry and made available to the media and other interested citizens. The disclosure statement, to be effective, would have to be reasonably comprehensive, but it need not require the disclosure of net worth. What is important to disclose is not the public office holder's overall net worth or the dollar value of each and every asset, but the existence and general range of value of these assets. It is my view that it may be sufficient to disclose the source, type, and range of value for certain kinds of financial interests, rather than the exact dollar amount. By range of value I mean monetary categories, such as "under $1000," "$1000 to $5000," or "over $100,000."

One could, for example, design a disclosure statement that required the public office holder to disclose on an annual and updated basis all sources of income, assets and liabilities, holdings and transactions in property, as well as activities and positions held. Important policy decisions, of course, would have to be made about which assets or liabilities would require disclosure by source, type, and exact dollar amount and which would need only source, type, and range of value.

I understand that this approach to financial disclosure requirements has been in place in the United States for nearly a decade. Under the Ethics in Government Act 2 U.S.C. 701 et seq. enacted in 1978, members of Congress and of the executive and judicial branches of the federal government are required to file financial disclosure statements listing assets and financial interests by source, type, and either exact dollar amount or range of value.

The U.S. Ethics in Government Act also requires public disclosure of all activities and positions held during the current calendar year, and in particular:

> The identity of all positions held on or before the date of filing during the current calendar year . . . as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any non-profit organization, any labor organization or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature. (pp. 21–22)

The public disclosure statement required under U.S. federal law must be filed on an annual basis and must be continuously updated as circumstances change.

By all accounts the U.S. disclosure requirements are working reasonably well. There have been criticisms relating to investigation and enforcement, but the requirements in principle have received wide-ranging approval. I was particularly interested to learn that the disclosure requirements have not discouraged "good people" from entering politics or running for public office. For example, a study of members of the U.S. House of Representatives and Senate conducted by the Center for Responsive Politics in 1985 found no one who felt that financial disclosure affected his or her decision to seek public office. Further, the vast majority of senators and representatives interviewed said that they knew no one who declined to seek public office because of the disclosure requirements. The disclosure obligation is seen as a reasonable requirement that quite properly attaches to the privilege of holding public office.

The actual design of a public disclosure requirement for Canadian cabinet ministers undoubtedly merits more study. My concern here is simply to emphasize the importance of having a principled and effective cornerstone for a modern conflict of interest code. That cornerstone in my view must be public disclosure.

The Role of the Blind Trust

Disclosure is only one part of an effective conflict of interest regime. Disclosure alone does not prevent conflicts of interest. Even with disclosure, there would still be occasions for conflicts of interest whenever the public office holder's private financial interests encroached upon the exercise of his or her public duties or responsibilities. To minimize the incidence and frequency of such occasions, most conflict of interest codes, even those premised on public disclosure, provide for divestment. The Starr-Sharp Report explained the rationale for divestment:

> In theory, divesting oneself of assets and business connections frees one for the execution of one's official responsibilities without any risk of a conflict of one's governmental responsibilities with one's personal economic interests. . . .
>
> [Divestment] is a form of preventive medicine. . . . [R]ather than an individual continually worrying about whether a particular decision will affect one of his or her specific vested interests, and rather than having the public perceive that a public office holder could be ensconced in a position to confer benefits upon himself or herself, it has been decided that the problem should be removed in advance by requiring divestment of certain types of assets and relinquishing of certain types of interests by those in authority. (p. 63)

Disclosure, after all, does not affect the continuing obligation to recuse or withdraw from exercising a duty or responsibility of office when necessary. To avoid the debilitating effect of permanent or semi-permanent recusal from exercising the duties and responsibilities of office for which the public office holder was appointed, he or she must divest certain private interests. (Failing that, the public office holder should change portfolios or resign from public office altogether.)

Thus, the present code requires that controlled assets be divested, usually via arm's length sale or trust. If the divestiture is via arm's length sale, the problem is at an end. If a decision is made to use a blind trust, however, the problems continue. In my view, to make the trust effective, the minister would still have to withdraw from the exercise of any duties or responsibilities of public office that might involve a conflict until advised that the problematic asset had been divested and, with regard to that asset, the blind trust was truly blind. But the likelihood of that happening in a timely fashion would depend on the likelihood that the blind trust asset would really be sold by the trustee.

The real difficulty with regard to divestment by way of blind trust stems from the definition of controlled assets — that is, the kinds of assets eligible for a blind trust. I noted earlier that this definition allowed Mr. Stevens to place what was effectively a family business into a blind trust whose blindness understandably became the subject of immediate scepticism even apart from the evidence of Mr. Stevens' knowledge of and involvement in the affairs of York Centre. It is simply wrong to provide such a vague and open-ended definition of the kinds of assets that can be placed in a blind trust.

However, a more important question is whether the blind trust should be retained at all. The Starr-Sharp Report (1984) cautioned that "trusts are at best an imperfect instrument," but concluded that it could "see no feasible alternative to trusts as a means of temporary divestment of assets that could involve conflicts between public duties and private interests" (p. 114). Recently, however, a number of studies have begun to recognize the deficiencies of using blind trusts to avoid conflicts of interest. The Aird Report (1986) noted that "the mechanism of the blind trust as currently utilized, has fallen into disrepute. In the public eye, the blind trust is too often a mere optical illusion" (pp. 5–6). Nonetheless, Mr. Aird ultimately concluded that the blind trust was still viable and should be retained.

This aspect of his report was not adopted by the Ontario government. In the proposed Members' Standards of Office Act, 1986, described earlier, the blind trust is abolished. In his speech to the Ontario Legislative Assembly, the attorney general explained that the blind trust was being abolished because "the blind trust mechanism requires a blind faith in its opaqueness that the citizens of this province are no longer able to share" (Ontario, Legislative Assembly, *Debates*, November 27, 1986). Instead, the act provides for a "management trust" that cabinet ministers can establish to manage their business interests while they are holding public office. The management trust is designed to distance the minister from his or her private business interests. There is no attempt to blind the minister to the existence of these business interests — indeed, the minister is informed of any material changes in the trust holding.

I have a number of serious concerns about the management trust. First, the management trust is a confusing and unnecessary device. The confusion will arise from the fact that the management trust has nothing to do with divestment and yet will be seen as an attempt to further true divestment. It must be remembered that even if a minister places the management of certain assets into a management trust, the minister still continues to bear the responsibility to prevent conflicts of interest with regard to the assets in the management trust. The assets have not been divested and yet the formality of a management trust will invite a misplaced confidence (both on the part of ministers and the public) that something akin to divestment has been accomplished. This is undesirable.

Secondly, the management trust may be an unnecessarily formal mechanism for accomplishing what would occur in any event routinely and informally. A minister seeking properly to comply with the requirement to devote full-time attention to the responsibilities of public office would necessarily have to turn over certain private interests, whether a farm, a business, or the management of a financial portfolio, to someone else while in public office. This can be accomplished now with oral or written agreements — formal management trust documentation is not needed and, if needed, it can be made available without the endorsement of a conflict of interest code.

In sum, I do not believe there is value in including in a conflict of interest code a trust mechanism that may easily be misunderstood and misapplied. To my mind, the hard decisions about which assets can be retained and which have to go must be made, and those that have to be divested should truly be divested.

Where such divestment is needed, the only real alternative to outright sale is divestment via a truly blind blind trust. But given the difficulties of design and definition, and the criticisms that have been levelled at the blind trust, can the blind trust still perform a meaningful role?

The only way that a blind trust can work as a legitimate vehicle for divestment is if its "blindness" can be ensured. The only way that blindness can be ensured is by strictly limiting the kinds of assets or interests that can be placed into a blind trust. The Aird Report (1986) concluded that "[a]ny form of asset should be eligible for placement into a blind trust" (p. 53). With respect, I disagree. In my view, the only assets that should be placed into a blind trust are those that can truly and easily be sold by an arm's length trustee, such as publicly traded securities. The blind trust should never be used for any other kind of holding, and certainly not for anything like a family business or family firm.

Given this narrow category of eligible assets and given the reality that most public office holders could use the transition period to allow for a regularized divestment of a stock and bond portfolio, the question that remains is whether or not the blind trust option should be preserved for the public office holder who prefers, perhaps for market reasons, to retain a diversified portfolio of stocks and bonds, although blinded about its contents. On balance, I question the rationale for retaining an instrument as widely criticized as the blind trust for such a narrow compass of cases, and I urge its abolition.

If the blind trust is retained, however, it should be made clear, first, that only a very limited category of assets are eligible for inclusion, and, secondly, that even with a blind trust, the public office holder remains obliged to recuse from activities that could give rise to conflicts until notified that the original blind trust assets have been divested. Although perhaps obvious, it should also be made clear that the public office holder must neither obtain, nor seek to obtain directly or indirectly any information about the trust assets and must avoid any involvement with them.

In sum, it is essential that a modern conflict of interest policy deal with the concept of divestment from first principles: the theory behind divestment, how it can best be achieved, and when and under what circumstances a blind trust alternative should be permitted. The lingering policy question is whether the blind trust should be retained for a narrowly defined category of assets or abolished outright. In my view, as noted earlier, the blind trust should be abolished.

Declaration of Interest and Withdrawal (Recusal)

In addition to the twin mechanisms of disclosure and divestment, the code also requires ministers to avoid certain situations giving rise to conflicts of interest and contains a number of statements of principle for their guidance. There is, however, no clear direction in the code as to what the proscription against conflict of interest means for the public office holder on a day-to-day basis. Granted, a number of general principles are set out that require public office holders to perform their official duties and arrange their private affairs "in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced," but these open-ended principles provide no real direction and fail to establish a workable system for achieving the desired objective.

It is a fundamental premise that ministers should not deal with public duties and responsibilities of office in situations of conflict with their private interests. I suggest a twofold system for addressing this problem that tries to prevent occasions for conflict from arising and, should they occur, provides for an established procedure for their resolution.

My first suggestion is that a registry of interests (identical to a minister's disclosure) be established by a minister on entering office so that public activities involving or relating to these private interests could be handled by others without the minister's involvement or knowledge.

Such a registry would therefore contain the initial disclosure and updates. It would be open for inspection by the public but its primary use would be by officials designated to see that matters involving the disclosed interests never reached the minister. In other words, where it is considered appropriate for a minister to retain his private interests, or where such interests have not yet been fully divested by sale, there would be a formal system in place to prevent the minister from dealing with or knowing of any public matter possibly affecting such interests.

The registry's primary purpose would be to formalize the areas in which a need for recusal is foreseeable and to minimize the incidents of interruption or inconvenience or the suggestions of impropriety, by providing for ongoing disclosure and formal withdrawal. The registry would act as a formal declaration of interests and provide a mechanism for withdrawal. I note that provisions for declaration and withdrawal are in place in some provinces in Canada. In one instance, there is even a system for recording these occasions as well. The federal government in the United States has also instituted a "recusal agreement" system for the executive branch of government.

Nonetheless, occasions of conflict of interest could still arise in spite of the registry, and here I suggest that the further requirement of an ad hoc declaration and recusal be made clear and explicit, with guidance given as to who should be informed of the problem and how the minister's public duty and responsibility is then to be handled. Such a system is designed to assist the minister to resolve conflicts of interest in favour of the public interest by providing clear direction as to what he or she must do.

I am satisfied that the adoption of a formal system for recusal will enable ministers to meet more easily the requirements to avoid or resolve conflicts of interest. Obviously the system will be useful only where recusal is not the norm for the particular minister. Where a minister's private interests are of such a nature or extent as to require routine withdrawal from public duties, divestment of the interests or declining or resigning the office will be necessary. Nonetheless, in the more usual case of a minister with limited private interests, recusal will serve as a vital adjunct to the cornerstone of public disclosure.

Disclosure of Spouse's Financial Interests and Activities

The third area of concern is spouses. Elsewhere in this report I have had occasion to observe that the guidelines and code as drafted at present do not apply to spouses. Not only is the spouse not governed by the same conflicts regime as the minister, but the guidelines and code place no restraint of any kind on a spouse's activities or dealings with property. The entire burden of ensuring that spousal activities and dealings with property do not create situations of conflict rests with the minister.

In this regard, both Prime Minister Trudeau's letter of April 28, 1980 (Appendix G), and Prime Minister Mulroney's letter of September 9, 1985 (Appendix H), impose a duty on a minister to ensure, first, that a spouse's activities do not create a conflict for the minister, and, secondly, that a spouse is not used as a vehicle to circumvent restrictions on the minister's behaviour. To discharge this duty effectively, the minister must remain sufficiently aware of a spouse's activities or dealings with property to take whatever action is necessary to avoid real or apparent conflicts. This duty, which is by its very nature ongoing, necessarily implies that, if issues of conflict do arise and no mutually satisfactory arrangement is reached between the spouses as to who will abstain from certain activities, it is the office holder who must withdraw from the performance of public duties.

Thus it can be seen that the regime at present in place for dealing with spousal interests and activities requires a clearly defined system of recusal for its effective implementation; this system it does not possess. A further difficulty with the present regime is the extremely high level of vigilance required of the public office holder. I am satisfied that in some cases, despite good faith and real effort, the office holder may have difficulty assessing the potential for conflict, real or apparent, arising from spousal activities or dealings with property. These inadequacies underscore the need to address the more fundamental issue of whether spouses of public office holders should themselves be governed by conflict of interest provisions, and, if so, of what kind.

The present federal conflict of interest regime is unique among conflict of interest regimes in Canada in expressly exempting spouses from its provisions. In nine provinces provision has already been made (and is also being retained in proposals for change) for disclosure of the financial interests of ministers' spouses. It is also noteworthy that the approach taken to compliance by spouses by various federal governments has differed. In 1979 spouses were governed by compliance provisions which went so far as to require divestment of some types of assets. As the Starr-Sharp Report noted, serious objection was taken to such provisions by at least one spouse of a public office holder. In 1980 the regime was changed to its present form.

The objection to including spouses in a conflict of interest regime is that their inclusion is inconsistent with recognizing that independent spouses have separate professional, economic, social, and political interests. It is said that to require compliance is to treat a spouse as an appendage of an office holder and to treat his or her interests as secondary to those of the public office holder.

I find this argument misconceived in several respects. The present federal conflict of interest regime could just as well be interpreted as premised on notions of a nuclear family with only one spouse actively involved in economic pursuits. Such a premise would favour a regime that disregarded spousal activities and dealings with properties because the potential for such activities giving rise to a situation of conflict would be remote. Indeed, one does not have to go back too far in time to find a situation where women were systematically excluded from participation in economic activity by being denied access to professions, excluded from holding office, and severely limited in their right to deal with property. A conflict of interest regime premised on the assumption that the spouses in question would be women whose activities would be confined to the home could just as easily have led to the present requirement that spouses not be required to comply.

In any event, the reality of modern life is quite different. Women today are increasingly breaking down the barriers to full participation in economic activity. Women today do pursue independent careers. Indeed, marital relationships frequently involve spouses with separate professional, financial, social, and political interests. It is this very independence that gives rise to concerns about conflict of interest.

In acknowledging the modern reality of spousal independence, however, one must also acknowledge the existence and effect of the marital relationship. Spousal independence must be considered in the context of the modern institution of marriage. Major reform has occurred across Canada in the area of family law, which in varying degrees has sought to recognize marriage as a partnership of equals. These reforms endeavour to recognize the economic contribution of both spouses and the legitimacy of their interest in one another's financial activities. The effect of these changes has been to create regimes where each spouse has a clear pecuniary interest in the financial activities of the other. These legal changes have only enhanced the social reality that spouses usually have a profound impact upon one another.

Still, it is self-evident that no conflict of interest regime could or should require a spouse to divest property or to abandon a career or other social or political interests. Such a requirement would be an unjustifiable infringement of contemporary principles of equality. This, however, does not end the matter. Other jurisdictions that have grappled with these issues have identified a legitimate public interest in compelling spouses to disclose at least their financial activities while at the same time acknowledging their right to pursue and possess independent interests. By requiring such disclosure, the reality of marriage as an economic partnership is recognized and the public office holder's pecuniary interest in a spouse's financial activities is identified.

Even with a regime that is limited to disclosure, the question of whether the public interest in ensuring the integrity of decision making in government is sufficient to outweigh a spouse's interest in privacy remains. The public interest in ensuring integrity in government has increased along with the growth of government itself. The modern state is more directly involved in the affairs of its citizens than ever before, a fact that has led increasingly to demands for openness and accountability in governmental decision making.

With this growth in government has come a diminishing respect in recent years for its institutions. There exists in some segments of the community a perception, based in part upon extensive exposure to both national and international incidents, that public office holders lack integrity. One aspect of this perception is that public duties are sometimes discharged with an eye to private gain — either the office holder's or his or her family's. Whether such suggestions of impropriety in government are made in Canada or elsewhere, they have had an impact on the community's collective faith in the honesty of its elected officials. Therefore, provisions governing the conduct of public office holders, particularly at the ministerial level, must acknowledge the need both to ensure that actual decision making is free from conflict as well as to enhance the community's perception that this is so. The importance of these concerns cannot be overestimated. They relate to the continued legitimacy of the state itself and the maintenance of the consensus necessary to govern.

It has also been argued that the effect of requiring disclosure of financial interests will be to hamper married women unduly from entering public life in circumstances where their husbands will have to make disclosure. This would be a very serious drawback if true. However, the validity of this assertion is difficult to assess. I have been unable to find any empirical data in Canada addressing this concern. It is of some significance that the Center for Responsive Politics study referred to earlier indicated that the fact that there are now more female members, and thus more male spouses, should not affect the disclosure laws that are in place at the federal level in the United States.

In light of these views, and despite any apparent unease men may have about being publicly scrutinized because of their wives' public profile, I am satisfied that a modern conflict of interest regime requires public disclosure of the financial interests of spouses, whether male or female. I am fortified in this conclusion by the fact that all Canadian provinces with rules for disclosure by office holders apply a disclosure requirement to spouses as well.

Disclosure of Spouse's Financial Interests

I do not propose that total disclosure of interests be required without regard to a spouse's right to privacy, but rather disclosure of only those kinds of interests that might reasonably be said to give rise to concerns regarding conflict of interest. Thus I would reject as unjustified a system of disclosure that made available information such as appears on an income tax return. In my opinion, no public interest is served by this type of disclosure. The disclosure of financial interests required of a spouse ought to be identical in scope to that required of the public office holder.

Although the financial interests of a spouse ought in general to be disclosed, at least one foreign jurisdiction has sought to recognize a narrow exemption from disclosure for a truly independent financial interest which is of no benefit to the office holder. Such provisions have been the subject of serious criticism because of the vagueness associated with any kind of "benefits" test. It is readily apparent that income, although kept exclusively for the benefit of one spouse, may indirectly benefit the other in certain circumstances. Although the question of whether such an exemption is or can be made workable cannot be answered within the confines of this report, I am satisfied that, in principle, such an exemption is appropriate for ensuring spousal privacy in those rare cases of truly independent financial interests.

Disclosure of Spouse's Activities

One area of concern that has arisen in the context of this Inquiry is the question of public disclosure of certain spousal activities, such as positions held as an officer, director, employee, or consultant. Most regimes exempt disclosure of such activities on the part of the spouse, although they require such disclosure by the office holder. This exemption obviously rests upon considerations of the spouse's right to privacy. It has been suggested that disclosure of activities is unnecessary because reporting is required of significant sources of a spouse's earned income. In these circumstances, a spouse's connection to a company would become apparent in most cases.

However, I have doubts about exempting from disclosure any activities that have an avowedly commercial character *and* that it might reasonably be said could give rise to a conflict of interest on the part of the office holder. In my opinion, it would be preferable for these activities to be disclosed. To a large extent, such activities are already included in the public record by way of other mandatory government filings, for example, lists of officers and directors of incorporated businesses. In such circumstances, to require disclosure would not be an intrusion on a spouse's privacy. If such activities are not disclosed elsewhere but are of a commercial character, the public interest in monitoring and preventing conflicts through disclosure outweighs the spouse's interest in privacy in this narrow area. Such a requirement, however, should not require disclosure of activities of a purely religious, philanthropic, or political nature.

Office of the ADRG

The Inquiry heard a great deal of evidence about the structure and operation of the office of the Assistant Deputy Registrar General. The office of the ADRG was established in May 1974 and was made responsible for the administration of the federal government's rules on conflict of interest. It was located in the Department of Consumer and Corporate Affairs. In addition to its responsibilities for the administration of the conflict of interest code, the office of the ADRG was also given responsibility for various formal document procedures that are required of the Registrar General of Canada and for the use and safe keeping of various formal instruments such as the Great Seal of Canada.

As I have noted earlier in Chapter 2, the office of the ADRG was never intended to have an independent role or function in the conflict of interest area. Indeed, herein may lie the seed of some of the difficulties that have surrounded the operation of the office as brought to light during this Inquiry. Two points became clear as the Inquiry progressed: first, the administration of the federal conflict of interest regime would be better served if the office in charge could be given a separate and more visible status with a clearer and more appropriate focus, namely, conflict of interest alone; secondly, the demands of administering the federal conflict of interest regime in an effective and efficient manner require additional and more sophisticated resources.

In recent years, a number of federal and provincial studies have recommended the establishment of a conflict of interest office that would have a clearer mandate, broader powers, and a higher public profile than that of the existing ADRG. The Starr-Sharp Report recommended the establishment of an "Office of Public Sector Ethics" headed by an "Ethics Counsellor" (p. 201). The Aird Report recommended a "Commissioner of Compliance" with wide-ranging investigative and enforcement powers (p. 6). In the United States, the 1978 Ethics in Government Act established an "Office of Government Ethics" (p. 48).

It is not my purpose here to consider the various models or to make recommendations that may be seen as a detailed blueprint for the reform of the office of the ADRG. I leave these important policy decisions for Parliament. The questions that surround the reform of the office of the ADRG — where it should be located, how it should be structured, to whom it should be accountable, how it should be designed and staffed, what powers it should have, and so on — are questions that merit more detailed study.

My contribution here is to identify the kinds of functions that the Conflicts of Interest Office, whether it be an office of government ethics, a conflict of interest commissioner, or a redesigned ADRG, should perform in principle. Based on the lessons learned in this Inquiry, I suggest that in addition to providing information, education, and consultation, and giving advice, the office responsible for the administration of the federal conflict of interest law be empowered to perform two further functions:

- *Opinions and rulings* The office should have the power to make rulings on questions that arise with regard to details of compliance; the office should have the ability to make judgment calls and the administrative discretion to "waive" the application of a technical compliance requirement when reasonable to do so; where appropriate the opinions and rulings should be published and circulated.
- *Investigation and inquiry* The office should have the mandate and sufficient resources to undertake follow-up investigations to ensure that compliance is achieved, or initiate fresh investigations with regard to allegations of non-compliance or conflict of interest; the office should also have the capability to conduct independent inquiries when investigations disclose that further inquiry is warranted.

Related to the investigation and inquiry function, of course, is the question of enforcement and sanction. Should the office have the power to issue a public report following an investigation, or to recommend or impose sanctions or penalties? Or should these important policing aspects remain within the traditional structures of Parliament? These are questions that in my view are best left to parliamentarians and policy makers.

On the office of the ADRG, I am content to make two basic observations: first, the office as structured at present needs to be redesigned; secondly, whatever shape the new conflict of interest office takes, it must have a clearer mandate, broader powers, and a higher profile so that it can have greater impact in ensuring that the new conflict of interest system will be understood, implemented, and enforced.

Final Observations and Proposals for Reform

I have referred throughout this part of my report to the need for new federal conflict of interest rules. It is important that I make myself clear. Conflict of interest is much too important to leave to the vagaries of guidelines and codes. In my view, the time has come to move beyond codes of conduct and establish conflict of interest rules that have the force of law. I recommend that comprehensive legislation be enacted relating to conflict of interest; that the legislation contain clearly worded definitions and directions; that conflict of interest be defined as suggested in Chapter 3 of this report; that the compliance requirements be clearly drawn and easily understood; and that the legislation be enforced when appropriate with penal sanction.

Based on the lessons learned in this Inquiry, I suggest the following specific recommendations for reform:

- The federal conflict of interest law should be based on the principle of public disclosure.
- Public disclosure means disclosure by the public office holder upon entering office, and continuously thereafter, of private financial interests and activities, by source, type, and dollar amount, or range of value, depending on the nature of the asset or interest being disclosed.
- The same financial interests and certain activities of a spouse should also be publicly disclosed in accordance with the guidelines suggested herein.
- The rules pertaining to disclosure and divestment should be set out in plain English and French so they can be easily understood.
- The blind trust should be abolished.

- The legislation should make clear that even with disclosure and divestment, the public office holder would have a continuing obligation to anticipate any remaining areas of potential conflict and to recuse when problems arise.
- A recusal registry system should be established in departments of government; foreseeable conflict areas would be identified in advance by the minister so that problematic matters could be handled by others without his or her involvement or knowledge.
- The office of the ADRG should be given a clearer mandate, broader powers, and a higher public profile. Whatever shape the structure takes, the office should have clear responsibility for the administration of the federal conflict of interest law and should at a minimum be empowered to perform the following functions: information, education, consultation, and advice; opinions and rulings; investigation and inquiry.

It is important to remember that no conflict of interest system can, by itself, guarantee ethics in government or prevent dishonourable conduct on the part of cabinet ministers or other public office holders. Ultimately, public trust and confidence in the integrity of government depends upon the integrity of individual public office holders and their individual sense of honour. Nonetheless, it is in my view important to provide clear conflict of interest rules that have the force of law and that provide useful direction for the vast majority of public office holders who do perform their duties and responsibilities in good faith and with integrity.

I recognize that the enactment of a federal conflict of interest law is a substantial undertaking and one that will necessarily involve much more than the four topics discussed herein. It is my hope, however, that my observations and suggestions for reform will be of assistance to federal parliamentarians as they consider the design and content of a much needed conflict of interest law.

Appendices

Appendix A

List of Counsel Appearing at the Inquiry

	Counsel
Commission Counsel	David W. Scott, Q.C. *Scott & Aylen*
	Edward P. Belobaba *Gowling & Henderson*
	Marlys Edwardh *Ruby and Edwardh*
*Sinclair M. Stevens	John Sopinka, Q.C. Kathryn I. Chalmers Margaret E. Grottenthaler *Stikeman, Elliott*
*Noreen M. Stevens	Thomas J. Lockwood, Q.C. Kristine L. Delkus *Lockwood, Bellmore & Moore*
	Laura Legge, Q.C. Mary M.P. Stokes *Legge & Legge*
*Government of Canada	W. Ian Binnie, Q.C. *McCarthy & McCarthy*
	Urszula Kaczmarczyk April Burey *Department of Justice*
*Liberal Party	Stephen R. LeDrew *Lyons, Arbus & Goodman*
*New Democratic Party Caucus	Linda Gobeil *NDP Caucus Research Bureau*

	Counsel
*Edward Rowe *York Centre Corporation	Roy E. Stephenson *Roy E. Stephenson*
*Shirley Walker	Donald H. Jack *McDonald & Hayden*
*Frank Stronach *Magna International Inc.	John F. Howard, Q.C. James W. Garrow, Q.C H. Jory Kesten J.W. Brown, Q.C. B.J. Sherman *Blake, Cassels & Graydon*
*Hyundai Auto Canada Inc.	James G. Beamish Larry Theall David Penhorwood *Miller, Thomson, Sedgewick, Lewis & Healy*
*Anton Czapka	Robert B. Tuer, Q.C. Peter C. Wardle *Fasken & Calvin*
	J.B.G. Ledger *Osler, Hoskin & Harcourt*
Canadian Imperial Bank of Commerce	Derek C. Hayes *Canadian Imperial Bank of Commerce*
	James P. Dube *Blake, Cassels & Graydon*
Canadian Broadcasting Corporation	Daniel J. Henry *Canadian Broadcasting Corporation*
National Trust Company	Robert P. Armstrong, Q.C. John H. Tory *Tory, Tory, DesLauriers & Binnington*
Guaranty Trust Company of Canada	Michael D. Novak *Guaranty Trust Company of Canada*
Mel Leiderman	S.G. Fisher, Q.C. *McMillan, Binch*

	Counsel
Continental Bank of Canada	Charles F. Scott *Tory, Tory, DesLauriers & Binnington*
Thorne, Ernst & Whinney	T.R. Lederer *Osler, Hoskin & Harcourt*
*Hanil Bank Canada	Richard M. Krempulec *Blaney, McMurtry, Stapells*
Burns Fry Limited	Henry J. Knowles, Q.C. *Woolley, Dale & Dingwall*
Gordon Capital Corp.	Tom I.A. Allen, Q.C. *Davies, Ward & Beck*
Canada Development Investment Corporation	J.L. McDougall, Q.C. I.V.B. Nordheimer *Fraser & Beatty*
Dominion Securities Limited	John T. Morin, Q.C. *Campbell, Godfrey & Lewtas*
McLeod Young Weir Ltd.	Garfield Emerson *Davies, Ward & Beck*
J. Trevor Eyton	H. Lorne Morphy, Q.C. Kent E. Thomson *Tory, Tory, DesLauriers & Binnington*
Richardson Greenshields of Canada Limited	Paul V. McCallen *Aird & Berlis*
Noranda Inc.	J.W. Ivany *Noranda Inc.*
Bank of Nova Scotia	F.J.C. Newbould *Tilley, Carson & Findlay*
Helmut Hofmann	A.M. Gans *Miller, Thomson, Sedgewick, Lewis & Healy*

	Counsel
*Canada Development Corporation	K.W. Scott, Q.C. *Borden & Elliot*
Chase Manhattan Bank of Canada	I.V.B. Nordheimer *Fraser & Beatty*
Donald Busby	A.B. Doran, Q.C. *Lang Michener Lash Johnston*
Harold Anthony Hampson	D.R. O'Connor, Q.C. *Borden & Elliot*
Globe and Mail	Alastair R. Paterson, Q.C. Peter M. Jacobsen *Paterson, MacDougall*
Canadian Association of Japanese Automobile Dealers	P.C. Upshall, Q.C. *Upshall, MacKenzie and Kelday*
Deirdre Jean Barker Elizabeth Hopkins	Thomas J. Dunne, Q.C. *Armstrong, Schiralli & Dunne*
Philip MacDonald	Robert A. Blair, Q.C. *Morris/Rose/Ledgett*
Mrs. Philip MacDonald	D.C. McTavish, Q.C. *Bastedo, Cooper & Shostack*

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* Parties with standing. All parties seeking standing were granted it.

Appendix B

Parties Making Written Submissions to the Commission

Commission Counsel
Sinclair M. Stevens
Noreen M. Stevens
Anton Czapka
Shirley Walker
Government of Canada
Canada Development Investment Corporation
Magna International Inc.
J. Trevor Eyton
Hanil Bank Canada
Hyundai Auto Canada Inc.
National Trust Company

Appendix C

List of Witnesses

Robert C. Allison
Director, Automotive and Metal Fabricating, Ontario, DRIE

Neil Baker
Shareholder and Director, Gordon Capital

Deirdre Jean Barker
Niece of William Mollard

Jocelyn Bennett
Partner and Director, Gordon Capital

John Blackwood
Regional Executive Director, Ontario, DRIE

Frederick Bourgase
Project Officer, DRIE

J. Robert Boyle
Assistant Deputy Registrar General

Paul J. Brown
Policy Adviser, DRIE

Robert E. Brown
Assistant Deputy Minister, DRIE

Bruce Buckley
Chartered Accountant, Thorne, Ernst & Whinney

Donald Busby
President, Goldsil Resources and Mahogany Minerals Resources

Robert Callander
Mining Specialist, Corporate Finance, Burns Fry

Donald Campbell
Canadian Ambassador to South Korea

Stewart Carter
Senior Accounts Officer, Guaranty Trust

Alfred Chaiton
Consultant, Capital Hill Group

Aline Charlebois
Secretary to Sinclair M. Stevens, DRIE

Daniel Chicoine
Vice-President, Marketing, Integram Group, Magna

Andrew Chong
Vice-President, Finance and Administration, Hyundai Auto Canada

Douglas Clemence
Administrator, Bank of Nova Scotia

Brian Colburn
Vice-President, Secretary and General Counsel, Magna

Clarence Cole
Senior Executive Vice-President, Credit, Canadian Imperial Bank of Commerce

Jim Connacher
Chairman, Chief Executive Officer, Gordon Capital

Anton Czapka
Businessman, Magna

James Dancey
Project Officer, DRIE

James Davie
Vice-President, Director,
Dominion Securities

James Gerald Davies
Vice-President, Corporate Finance,
Richardson Greenshields

John Arnold Denton
Vice-President, Corporate Credit,
Hanil Bank

Richard Donaldson
Director of Government Relations,
Magna

James Downer
Vice-President, Investment Canada

Angus Dunn
Director, Morgan Grenfell

Philip Evershed
Special Assistant, Exempt Staff,
DRIE

J. Trevor Eyton
President, Chief Executive Officer,
Brascan

Anthony Fell
President, Chief Executive Officer,
Dominion Securities

David Ford
In-house Corporate Counsel, Magna

Joan Foulkes
Bookkeeper,
York Centre Corporation

Norman Gibbons
Vice-President, Hyundai Auto
Canada

Ronald Graham
President,
Ronald J. Graham Consultants

Nigel Gray
Vice-President, General Counsel,
CDC

Marian Guilfoyle
Special Assistant to Mr. Stevens

Harold Anthony Hampson
President, Chief Executive Officer,
CDC

Michael Harris
Journalist, *Globe and Mail*

Peter Herbert
Director, Standard of Conduct
Advisory Group, Assistant Deputy
Registrar General

Helmut Hofmann
President, Devtek Corporation

Vera Holiad
Communications Adviser, DRIE

Elizabeth Hopkins
Sister of William Mollard

James Howe
Director General, Special Projects,
DRIE

Gerald Jean
Project Officer, DRIE

James Kay
Chairman of the Board,
Dylex Corporation

Gerald Kelly
Acting Executive Director, Ontario,
DRIE

Thomas Kierans
President, Member of Executive
Committee, McLeod Young Weir

Paul Labbé
President, Investment Canada

John Lane
Director General of Saskatchewan,
DRIE

Richard John Lawrence
Chairman, Chief Executive Officer, Burns Fry

Mel Leiderman
Chartered Accountant and Partner, Lipton, Wiseman, Altbaum & Partners

Kenneth Leung
Senior Vice-President, Finance and Administration, Olympia & York Developments

Douglas Lewis
Lawyer, Department of Justice, assigned to DRIE

James McAlpine
Executive Vice-President, Magna

James Donald Macgregor
President, Canalands Resources and Sentry Oil & Gas

John MacNaughton
Director, Merger and Acquisition Group, Burns Fry

Paul Marshall
Chief Executive Officer, CDIC

Ronald Marshall
Assistant Deputy Minister, Operations, DRIE

Wilmot L. Matthews
Vice-Chairman, Burns Fry

Dennis Mills
Vice-President, Corporate Affairs, Magna

Brian Milner
Reporter, *Globe and Mail*

Frank Moores
Senior Trust Officer, National Trust

Greg Morris
Senior Vice-President, Credit, Canadian Imperial Bank of Commerce

Peter Nares
Vice-Chairman and Member of Board of Directors, Richardson Greenshields

Ronald Netolitzky
President, Taiga Consultants

John Nunziata
M.P., York South-Weston

Edward Parent
Chartered Accountant, Magna

Bruce Pender
Executive Assistant, MI Developments, Magna

Alfred Powis
Chairman, Chief Executive Officer, Noranda

Christopher Rocker
President, Chief Executive Officer, Chase Manhattan of Canada

Richard Ross
Assistant General Manager, Credit, Continental Bank

Edward Rowe
President, York Centre Corporation

Michael Ruf
Trust Officer, National Trust

David Robin Sloan
Senior Vice-President, Magna; Vice-President, MI Developments

Campbell Smith
Branch Manager, Bank of Nova Scotia

Andrew Sotak
Project Officer, DRIE

Charles Stedman
Director General, Automotive, Marine and Rail Branch, DRIE

Noreen M. Stevens
Director, Cardiff Investments, Clady Farm, and Sentry Oil & Gas

Sinclair M. Stevens
M.P., York-Peel

Geoffrey Stevens
Managing Editor, *Globe and Mail*

David Stewart-Patterson
Reporter, *Globe and Mail*

Frank Stronach
Chairman, Chief Executive Officer, Magna

Andrei Sulzenko
Director, Automotive, Marine and Rail Branch, DRIE

William Teschke
Deputy Minister, DRIE

David Torrey
Vice-Chairman, Dominion Securities

Juliette Toth
Receptionist, CDIC

Roland Wagg
Branch Manager, Canadian Imperial Bank of Commerce

Shirley Walker
Special Assistant to Sinclair M. Stevens, DRIE

J. Christopher Wansbrough
President, National Trust

Ronald Watkins
Director, Crown Investments, DRIE

Appendix D

Inquiry Schedule

Hearings

Commenced	Monday, June 16, 1986
Closed	Friday, February 20, 1987
Total number of days of hearings	83

Hearing Dates

Week 1	June 16, 1986 (preliminary hearing)
Week 2	July 14–17, 1986
Week 3	July 21–24, 1986
Week 4	July 28–31, 1986
Week 5	August 5–7, 1986
Week 6	August 11–14, 1986
Week 7	August 18–21, 1986
Week 8	August 25–28, 1986
Week 9	September 2–4, 1986
Week 10	September 15–19, 1986
Week 11	September 22–26, 1986
Week 12	September 29–30, 1986 October 1–2, 1986
Week 13	October 6–10, 1986
Week 14	October 14–17, 1986
Week 15	October 20–22, 1986
Week 16	October 28–29, 1986
Week 17	November 3–7, 1986
Week 18	November 10–14, 1986
Week 19	November 17–21, 1986
Week 20	November 24, 26, 28, 1986
Week 21	January 26, 1987
Week 22	February 16–20, 1987

Transcripts

83 volumes

Public hearings	13,992 pages
In-camera hearings	796 pages

Exhibits

Total number of public exhibits 232, representing approximately 25,000 pages

Total number of in-camera exhibits 9, representing approximately 1170 pages

Witnesses

Total number of witnesses called at the Inquiry 93

Appendix E

April 28, 1980

CONFLICT OF INTEREST GUIDELINES FOR MINISTERS OF THE CROWN

I Principles

1) The onus for preventing real, apparent or foreseeable conflicts of interest rests with the individual;

2) Ministers must perform and appear to perform their official responsibilities and arrange their private affairs in a manner that will conserve and enhance public confidence and trust in government and that will prevent conflicts of interest from arising;

3) Ministers must not take advantage or appear to take advantage of their official positions, or of information obtained in the course of their official duties that is not generally available to the public.

The purpose of these Guidelines is to assist Ministers in observing these principles and in maintaining the high standard of conduct expected of them. As the Guidelines are general in nature, conforming to the letter of them may not afford complete protection for individual Ministers in all cases. Each Minister is therefore responsible for taking whatever additional action may be necessary to ensure that conflicts of interest are avoided.

II Prohibited Activities

Ministers upon appointment, or as soon as possible thereafter, shall cease to:

1) engage in the practice of a profession or the management or operation of any business or commercial activity, or in the management of assets except exempt or discloseable assets;

2) serve as paid consultants;

3) retain or accept directorships or offices in commercial corporations. Although it could be proper in some circumstances for Ministers to retain or accept directorships or offices in organizations of a philanthropic or charitable character, great care must always be taken to prevent conflicts of interest from arising. Offers of directorships or offices in philanthropic or charitable organizations in receipt of federal public funds should be refused;

4) serve actively as members in unions or professional associations.

Each Minister will provide to the Assistant Deputy Registrar General (ADRG) for disclosure in the Public Registry information concerning the partnerships, directorships and corporate executive positions held by them during the two years preceding their appointment. These disclosures will provide sufficient information to identify the nature of the business involved and of the responsibilities carried.

III Avoidance of Preferential Treatment

Ministers shall not accord preferential treatment in relation to any official matter to relatives or friends or to organizations in which their relatives or friends have an interest.

Ministers must also take care to avoid placing, or appearing to place, themselves under an obligation to any person or organization which might profit from special consideration or favour on their part.

IV Gifts

Ministers shall disclose in the Public Registry any personal gift or other benefit of a value exceeding two hundred dollars which they receive from any person not connected with them by blood relationship, marriage or adoption, together with the name and address of the donor. Official gifts and hospitality received from other governments and hospitality received from personal friends are not subject to this rule. All gifts or benefits exceeding two hundred dollars in value, other than official gifts or benefits, are to be declared to the ADRG within thirty days of their receipt for disclosure in the Public Registry.

V Arrangements with Respect to Assets

At the time of their appointment to the Cabinet or upon the coming into force of these guidelines, Ministers shall make a full report to the Prime Minister, through the Assistant Deputy Registrar General (ADRG), of all their assets and liabilities. These reports will be updated by annual reports submitted by Ministers through the same channel, indicating changes in the assets, other than exempt assets, owned directly by them. These annual reports will include information about changes in the liabilities owed by Ministers.

A) Exempt Assets

There are no requirements of public disclosure or restrictions on dealing with property which is for the personal use of Ministers and their families or with other assets not of a commercial character ("exempt assets"). Exempt assets include: residences and recreational property used or intended for use by Ministers or their families; household goods and personal effects; automobiles; boats and other means of transport for personal use; and works of art. They also include cash and deposits (but do not include cash and deposits in foreign currency held for investment or speculative purposes); Canada and Provincial Savings Bonds; registered retirement savings plans that are not self-administered; self-administered registered retirement savings plans composed exclusively of exempt assets; registered home ownership savings plans; investments in open ended mutual funds; Guaranteed Investment Certificates and similar financial instruments; income averaging and other annuities; accrued pension rights; life insurance policies; money owed by a previous employer, client or partnership; personal loans to any individual connected with a Minister by blood relationship, marriage or adoption; and personal loans not in excess of $5,000 to any individual not connected with a Minister by blood relationship, marriage or adoption.

B) Discloseable Assets

Ministers may elect to disclose in the Public Registry the following assets owned by them when these assets are of such a nature that they are unlikely to give rise to a conflict of interest:

1) ownership interests in family businesses, and in companies whose stocks and shares are not traded publicly, which do not contract with the government, which are of a local character, and which do not own or control shares of public companies;

2) farms;

3) real property other than exempt property not normally for the Minister's or his family's personal use and which is unlikely to create a conflict of interest;

4) beneficial ownership of the assets of trusts other than blind trusts of which the administration is carried out at arm's length.

If Ministers do not elect to disclose non-conflicting assets in the Public Registry, these assets must be treated as "controlled assets". Initial reports of such assets shall be made by the Minister to the ADRG within 60 days of the Minister's appointment to the Cabinet, for the purpose of disclosure in the Public Registry. Information about any sale, purchase or acquisition through other means of assets of this character made subsequent to any initial report must be provided by the Minister to the ADRG within 30 days after the transaction has been completed for disclosure in the Public Registry. The information provided in these initial and subsequent disclosures will be open to public examination.

C) Controlled Assets

All assets other than exempt or discloseable assets owned by a Minister shall be considered controlled assets and shall be either sold in a normal arm's length, transaction or placed in a blind trust. Ministers may not after the completion of any arrangements necessary to comply with the Guidelines, purchase, sell or retain any direct interest in any controlled asset. If Ministers should acquire controlled assets through inheritance or gift after their arrangements have been completed, this shall be reported to the Prime Minister and either sold or placed in a blind trust.

Controlled assets include:

1) publicly traded securities of corporations and governments;

2) interests in partnerships, proprietorships, joint ventures, private companies and family businesses which are not discloseable assets;

3) stock options except those of private companies referred to in item 1) under Discloseable Assets;

4) self-administered registered retirement savings plans, except those composed exclusively of exempt assets;

5) real property which is not an exempt or discloseable asset;

6) commodities, including metals, and foreign currency for speculative or investment purposes;

7) interests in profit sharing plans;

8) loans that exceed $5,000 to individuals not connected with the Minister concerned by blood relationship, marriage or adoption.

1) Divestment - Selling

Ministers may sell controlled assets in a normal arm's length transaction but only for the purpose of complying with these Guidelines and within the time limits prescribed in them.

2) Divestment - Blind Trust

Controlled assets that are not sold must be placed in a blind trust. The following criteria shall be observed in establishing blind trusts to comply with these Guidelines:

1) Title to all assets placed in trust must be transferred to the trustee(s);

2) All trustees of such trusts shall be individuals, corporations or firms that deal with the Minister at arm's length (as this term is defined in the Income Tax Act of Canada). This means that individuals connected with a Minister by blood relationship, marriage or adoption cannot serve as trustees;

3) While there shall be no limit on the number of trustees that may be appointed, every trust must have at least one "government designated trustee" (all trust companies in possession of a valid licence and designated investment dealers);

4) All decisions of the trustees of a blind trust must be approved by a majority of the trustees, which majority must include the government designated trustee;

5) Subject to the requirements of 2, 3 and 4 above, a Minister may appoint as many independent trustees as he wishes;

6) The terms of each trust instrument shall place on the trustee(s) a clear responsibility not to divulge to, or otherwise inform, directly or indirectly, the Minister of any matter concerning the assets in or the management of the trust, except as hereinafter provided;

7) The trustee(s) of each trust must be empowered to make all decisions concerning the management of the assets in the trust free of direct or indirect control or influence by the Minister, and without informing, consulting with or seeking advice from the Minister;

8) Each trust instrument shall provide that the trustee(s) must deliver annual statements to the Minister that will permit the preparation of annual income tax returns, or compliance with any other legislation or legal requirements;

9) Any trust instrument may provide that the Minister be informed of the total value of the trust fund at any time, but such information and the statements referred to in item 8) above, must not disclose to the Minister the identity, nature, or value of any of the assets in the trust;

10) The terms of any blind trust instrument may provide that the net income of the trust fund be paid to the Minister at such intervals as may be agreed with the trustee(s);

11) The Minister may request the trustee(s) to pay to him or her such part of the capital of the trust fund, in cash and not in specie, as he or she may direct;

12) The Minister may add capital to the trust at any time during the life of the trust.

NOTE: Ministers may name persons other than themselves as beneficiaries of their blind trust, in which event these criteria apply *mutatis mutandis* to Ministers and the beneficiaries.

Within the period stipulated in these Guidelines, a copy of any blind trust instrument entered into by a Minister for the purposes of these Guidelines must be provided to the ADRG.

The deadline for receipt of these instruments may be extended by the Prime Minister in special circumstances.

3) Holding Companies

In cases where Ministers have established holding companies for estate planning purposes, they may put their rights in such companies into a trust for retention. In such circumstances, the trustee may not dispose of or otherwise affect the rights placed in the trust. The Assistant Deputy Registrar General may serve as trustee of such trusts.

In establishing such trusts, Ministers may make arrangements to have third parties exercise their voting rights in relation to the shares in the holding company as long as such arrangements will not result in a conflict of interest. Ministers who have established such trusts may not be consulted or informed of the disposition of any assets owned by the holding company that would be considered to be controlled assets under the terms of these guidelines.

VI Executorships and Trusteeships

Ministers are to disclose to the Prime Minister through the ADRG, all executorships and trusteeships and are to take appropriate steps to avoid conflicts of interest that might arise from serving actively as executor or trustee.

VII Spouses and Dependent Children

These guidelines do not directly apply to spouses or dependent children of Ministers. It goes without saying that Ministers must not transfer their assets to their spouses or dependent children with a view to avoiding the requirements of these Guidelines. Ministers should also bear in mind their individual responsibility to prevent conflicts of interest, including those that might conceivably arise or appear to arise out of dealings in property or investments which are owned or managed in whole or in part, by their spouses or dependent children.

VIII Administration

These Guidelines are administered on behalf of the Prime Minister by the Assistant Deputy Registrar General (ADRG). The ADRG will assist Ministers in complying with these Guidelines and will provide them with information and advice for this purpose.

Ministers must fully declare on a confidential basis their assets, liabilities and activities, including executorships and trusteeships, to the ADRG within 60 days of appointment to the Cabinet or of the coming into force of these Guidelines.

In order that the ADRG may assure Ministers that their trust instruments conform to the criteria set out in the Guidelines and will be satisfactory to the Prime Minister, trust instruments are to be submitted to the ADRG before they are executed.

Ministers must complete all arrangements necessary to achieve full compliance within 120 days of appointment or of the coming into force of these Guidelines. Within this time period, Ministers must provide to the ADRG copies of duly executed trust instruments and public disclosures of previous activities, personal gifts or benefits and discloseable assets, as required, and a public document in which they will indicate in summary form the arrangements they have made to comply with these Guidelines. The public disclosures of previous activities, personal gifts or benefits and discloseable assets and the summary of arrangements made by a Minister will be open to examination by the general public in the Public Registry maintained by the ADRG.

If questions related to compliance with these Guidelines cannot be resolved between a Minister and the ADRG, the matter will be referred by the ADRG or the Minister concerned to an advisory committee composed of the Clerk of the Privy Council and the Prime Minister's Principal Secretary for an opinion. Questions regarding the application of the Guidelines to unusual situations will be referred to the Prime Minister through the advisory committee.

A Minister's conflict of interest arrangements will be considered complete when approved by the Prime Minister.

IX Other Requirements

Conflict of Interest Rules for Parliamentarians

Ministers are subject, in addition to these Guidelines, to the provisions of the Senate and House of Commons Act as they apply to Senators and Members of Parliament. Attention is drawn, in particular, to the conflict of interest provisions of these Acts (Attached as Appendix I). They relate to incompatible offices, prohibited contracts with the government and prohibitions on fees received for influencing other Parliamentarians.

Post-Employment Guidelines

Ministers are also asked to comply with the Post-Employment Guidelines, attached as Appendix II.

APPENDIX I

SENATE AND HOUSE OF COMMONS ACT

Independence of Parliament

Members of the House of Commons

10. Except as hereinafter specially provided,

(a) no person accepting or holding any office, commission or employment, permanent or temporary, in the service of the Government of Canada, at the nomination of the Crown or at the nomination of any of the officers of the Government of Canada, to which any salary, fee, wages, allowance, emolument, or profit of any kind is attached, and

(b) no sheriff, registrar of deeds, clerk of the peace, or county crown attorney in any of the provinces of Canada,

is eligible as a member of the House of Commons, or shall sit or vote therein.

11. Nothing in section 10 renders ineligible any person holding any office, commission or employment, permanent or temporary, in the service of the Government of Canada, at the nomination of the Crown, or at the nomination of any of the officers of the Government of Canada, as a member of the House of Commons, or disqualifies him from sitting or voting therein, if, by his commission or other instrument of appointment, it is declared or provided that he shall hold such office, commission or employment without any salary, fees, wages, allowances, emolument or other profit of any kind, attached thereto.

12. Nothing in this Act renders ineligible or disqualifies any person as a member of the House of Commons or to sit or vote therein by reason of his being

(a) a member of Her Majesty's forces while he is on active service as a consequence of war, or

(b) a member of the reserve force of the Canadian Forces who is not on full-time service other than active service as a consequence of war.

13. Notwithstanding anything in this Act, a member of the House of Commons shall not vacate his seat by reason only of his acceptance of an office of profit under the Crown, if that office is an office the holder of which is capable of being elected to, or sitting or voting in, the House of Commons.

14. A person is not, by this Act, rendered ineligible as a member of the House of Commons or disqualified from sitting or voting in the House of Commons by reason only of his acceptance of travelling expenses paid out of public moneys of Canada where the travel is undertaken at the request of the Governor in Council on the public business of Canada.

15. A member of the Queen's Privy Council for Canada is not, by this Act, rendered ineligible as a member of the House of Commons or disqualified from sitting or voting in the House of Commons by reason only that he

(a) "holds an office for which a salary is provided in section 4 or 5 of the Salaries Act and receives that salary, or

(b) is a Minister of State, other than a Minister of State referred to in section 5 of the Salaries Act, or a Minister without Portfolio and receives a salary in respect of that position,"

if he is elected while he holds that office or position or is a member of the House of Commons at the date of his nomination by the Crown for that office or position.

16. No person, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, holding or enjoying, undertaking or executing any contract or agreement, expressed or implied, with or for the Government of Canada on behalf of the Crown, or with or for any of the officers of the Government of Canada, for which any public money of Canada is to be paid, is eligible as a member of the House of Commons, or shall sit or vote in the said House.

17. If any member of the House of Commons accepts any office or commission, or is concerned or interested in any contract, agreement, service or work that, by this Act, renders a person incapable of being elected to, or of sitting or voting in the House of Commons, or knowingly sells any goods, wares or merchandise to, or performs any service for the Government of Canada, or for any of the officers of the Government of Canada, for which any public money of Canada is paid or to be paid, whether such contract, agreement or sale is expressed or implied, and whether the transaction is single or continuous, the seat of such member is thereby vacated, and his election is thenceforth void.

18. (1) If any person disqualified or by this Act declared incapable of being elected to, or of sitting or voting in the House of Commons, or if any person duly elected, who has become disqualified to continue to be a member or to sit or vote, under section 17, nevertheless sits or votes, or continues to sit or vote therein, he shall thereby forfeit the sum of two hundred dollars for each and every day on which he so sits or votes.

(2) Such sum is recoverable from him by any person who sues for the same in any court of competent civil jurisdiction in Canada.

19. Sections 16, 17 and 18 extend to any transaction or act begun and concluded during a recess of Parliament.

20. (1) In every contract, agreement or commission to be made, entered into or accepted by any person with the Government of Canada, or any of the departments or officers of the Government of Canada, there shall be inserted an express condition, that no member of the House of Commons shall be admitted to any share or part of such contract, agreement or commission, or to any benefit to arise therefrom.

(2) In case any person, who has entered into or accepted, or who shall enter into or accept any such contract, agreement or commission, admits any member or members of the House of Commons, to any part or share thereof, or to receive any benefit thereby, every such person shall, for every such offence, forfeit and pay the sum of two thousand dollars, recoverable with costs in any court of competent jurisdiction by any person who sues for the same.

21. This Act does not extend to disqualify any person as a member of the House of Commons by reason of his being

(a) a shareholder in any incorporated company having a contract or agreement with the Government of Canada, except any company that undertakes a contract for the building of any public work;

(b) a person on whom the completion of any contract or agreement, expressed or implied, devolves by descent or limitation, or by marriage, or as devisee, legatee, executor or administrator, until twelve months have elapsed after the same has so devolved on him; or

(c) a contractor for the loan of money or of securities for the payment of money to the Government of Canada under the authority of Parliament, after public competition, or respecting the purchase or payment of the public stock or debentures of Canada, on terms common to all persons.

22. (1) No person, who is a member of the Senate, shall directly or indirectly, knowingly and wilfully be a party to or be concerned in any contract under which the public money of Canada is to be paid.

(2) If any person, who is a member of the Senate, knowingly and wilfully becomes a party to or concerned in any such contract, he shall forfeit the sum of two hundred dollars for each and every day during which he continues to be such party or so concerned.

(3) Such sum is recoverable from him by any person who sues for the same, in any court of competent jurisdiction in Canada.

(4) This section does not render any senator liable for such penalties, by reason of his being a shareholder in any incorporated company having a contract or agreement with the Government of Canada, except any company that undertakes a contract for the building of any public work.

(5) This section does not render any senator liable for such penalties by reason of his being, or having been, a contractor for the loan of money or of securities for the payment of money to the Government of Canada under the authority of Parliament, after public competition, or by reason of his being, or having been, a contractor respecting the purchase or payment of the public stock or debentures of Canada, on terms common to all persons.

Members of the Senate and of the House of Commons

23. (1) No member of the Senate or of the House of Commons shall receive or agree to receive any compensation, directly or indirectly, for services rendered, or to be rendered, to any person, either by himself or another, in relation to any bill, proceeding, contract, claim, controversy, charge, accusation, arrest or other matter before the Senate or the House of Commons, or before a committee of either House, or in order to influence or to attempt to influence any member of either House.

(2) Every member of the Senate offending against this section is liable to a fine of not less than one thousand dollars and not more than four thousand dollars; and every member of the House of Commons offending against this section is liable to a fine of not less than five hundred dollars and not more than two thousand dollars, and shall for five years after conviction of such offence, be disqualified from being a member of the House of Commons, and from holding any office in the public service of Canada.

(3) Any person who gives, offers, or promises to any such member any compensation for such services as aforesaid, rendered or to be rendered, is guilty of an indictable offence, and liable to one year's imprisonment and to a fine of not less than five hundred dollars and not more than two thousand dollars.

Limitation of Actions

24. No person is liable to any forfeiture or penalty imposed by this Act, unless proceedings are taken for the recovery thereof within twelve months after such forfeiture or penalty has been incurred.

POST-EMPLOYMENT

A. Guidelines for Ministers

1) Ministers should not allow themselves to be influenced in their pursuit of their official duties by plans for or offers of outside employment:

a) Ministers should disclose to the Prime Minister all serious offers of positions outside Government service which in their judgment put them in a position of a real or apparent conflict of interest;

b) Ministers should not accept any offers of employment outside Government service without first informing the Prime Minister;

c) Ministers should, in seeking employment or an occupation outside Government service or in preparing themselves for commercial activities after they will have left Government service, ensure that these endeavours do not lead to real or apparent conflicts of interest or in any way interfere with their official duties.

2) In any official dealings with former office holders, Ministers must ensure that they do not provide grounds or the appearance of grounds for allegations of improper influence, privileged access or preferential treatment.

B. Guidelines Applying to Employment and Commercial Activities of Former Ministers

The following guidelines are pursuant to the principles set out in the conflict of interest guidelines, and are to be applied in accordance with those principles and with the aim of protecting the individual liberty of former Ministers to the fullest extent possible.

These guidelines do not apply to former Ministers who remain in the Senate or House of Commons to the extent that they would impede the performance of their duties as Parliamentarians, but in such circumstances the former Minister must take care to follow the appropriate Parliamentary laws, rules and conventions relating to conflict of interest.

1) Within a period of two years of leaving office, Ministers should not:

a) accept appointment to a board of directors of a commercial corporation which, as a matter of course, was in a special relationship with the department or agency for which they were responsible on an ongoing basis during the last two years of their participation in the Ministry;

b) change sides to act for or on behalf of any person or commercial corporation in connection with any specific proceeding, transaction, case or other matter to which the Government of Canada is a party and in which they had a personal and substantial involvement on behalf of the Government during the last two years of their participation in the Ministry;

c) lobby for or on behalf of any person or commercial corporation before any department or agency for which they were responsible on an ongoing basis during the last two years of their participation in the Ministry.

2) Within a period of one year of leaving office, Ministers should not:

a) accept employment with a commercial corporation with which they had significant direct official dealings as Ministers during the last year of their participation in the Ministry;

b) change sides to act for or on behalf of any person or commercial corporation in connection with any specific proceeding, case, transaction or other matter which fell under their authority during the last year of their participation in the Ministry;

c) give counsel for commercial purposes concerning the programs or policies of the department or agency for which they were responsible on an ongoing basis, or with which they had a direct and substantial relationship during the last year of their participation in the Ministry.

NOTES: For these purposes "department or agency" includes Crown corporations but not quasi-judicial bodies. "Special relationship" in respect of paragraph 1(a) means regulation of the corporation by the department or agency, receipt by the corporation of subsidies, loans or other capital assistance from the department or agency, and contractual relationships between the corporation and the department or agency.

Appendix F

Conflict of Interest
and
Post-Employment Code
for
Public Office Holders

September 1985

Revised Version, November 1985

Copies available from the Office of the
Assistant Deputy Registrar General of Canada
Ottawa, K1A 0C9

Table of Contents

PART I

Page

Interpretation and Application 1
Object 2
Application 2
Principles 3
Propagation 4
    Certification 4
    Annual Review 4
    Contracts 4
    Education and Resource Centre 4
Supplementary Compliance Measures 4
Dealings with Former Public Office Holders 5
    Obligation to Report 5

PART II

- Conflict of Interest Compliance Measures—General 7

Interpretation 7
Object 8
Methods of Compliance 8
Sale for Circumvention Prohibited 9
Exempt Assets 9

- Conflict of Interest Compliance Measures—Category "A" Public Office Holders 11

Duties of the ADRG 11
Methods of Compliance 11
Public Evidence of Compliance 11
Time Limits 12
Assets and Liabilities 12
Outside Activities 14
Gifts, Hospitality and Other Benefits 15
Avoidance of Preferential Treatment 16
Failure to Agree 16
Failure to Comply 16
Subsequent Changes 16

- Conflict of Interest Compliance Measures—Category "B" Public Office Holders 17

Duties of the Designated Authority 17
Confidentiality 17
Methods of Compliance 17
Time Limits 17

Assets and Liabilities 17
Outside Activities 18
Gifts, Hospitality and Other Benefits 19
Avoidance of Preferential Treatment 19
Failure to Agree 20
Failure to Comply 20
Subsequent Changes 20

PART III

- Compliance Measures for Former Public Office Holders and Public Office Holders Anticipating Departure from Public Office 21

Interpretation 21
Designated Positions 22
Exclusion 23
Object 23
Compliance Measures 23
Advisory Panels 25
Exit Arrangements 25
Reconsideration 26
Failure to Comply 26

PART IV

- Compliance Measures for Employees of Crown Corporations and for Public Office Holders as Defined in Section 2 Who Are Not Subject to Part II or Part III 27

Crown Corporations 27
Lieutenant-Governors of a Province 27
Canadian Armed Forces 27
Royal Canadian Mounted Police 27
Interchange Canada 27
Boards, Commissions and Other Tribunals 28
Separate Employers 28

PART V

Transition 29

SCHEDULE

Trusts 30

CONFLICT OF INTEREST AND POST-EMPLOYMENT CODE FOR PUBLIC OFFICE HOLDERS

Short Title

1. This Code may be cited as the *Conflict of Interest Code*.

Part I

INTERPRETATION AND APPLICATION

2.(1) In this Code,

"ADRG" means the Assistant Deputy Registrar General; (SRGA)

"department" means any department as defined in the *Financial Administration Act*, other than the staffs of the Senate, the House of Commons and the Library of Parliament; (ministère)

"ministerial exempt staff" means those persons on the staff of a Minister of the Crown. (personnel soustrait d'un ministre)

(2) For the purposes of this Part, "public office holder" means any officer or employee of Her Majesty in Right of Canada and includes:

(a) a Minister of the Crown;

(b) a parliamentary secretary;

(c) a member of ministerial exempt staff;

(d) a ministerial appointee;

(e) a Governor in Council appointee, other than a judge receiving a salary under the *Judges Act*;

(f) an employee of a department;

(g) an employee of a separate employer as defined in the *Public Service Staff Relations Act*;

(h) an officer, director or employee of a federal board, commission or other tribunal as defined in the *Federal Court Act*;

(i) a member of the Canadian Armed Forces; and

(j) a member of the Royal Canadian Mounted Police. (titulaire d'une charge publique)

3. This Code does not apply to the staff of the Senate, House of Commons and Library of Parliament and to the persons holding the following offices:

(a) the Clerk of the Senate and Clerk of the Parliaments;

(b) the Law Clerk and Parliamentary Counsel of the Senate;

(c) the Assistant Clerk of the Senate;

(d) the Gentleman Usher of the Black Rod;

(e) the Clerk of the House of Commons;

(f) the Clerk Assistants of the House of Commons;

(g) the Sergeant-at-Arms;

(h) the Law Clerk and Parliamentary Counsel of the House of Commons;

(i) the Parliamentary Librarian; and

(j) the Associate Parliamentary Librarian.

OBJECT

4. The object of this Code is to enhance public confidence in the integrity of public office holders and the public service

(a) while encouraging experienced and competent persons to seek and accept public office;

(b) while facilitating interchange between the private and the public sector;

(c) by establishing clear rules of conduct respecting conflict of interest for, and post-employment practices applicable to, all public office holders; and

(d) by minimizing the possibility of conflicts arising between the private interests and public duties of public office holders and providing for the resolution of such conflicts in the public interest should they arise.

APPLICATION

5.(1) This Code provides general and specific direction to assist public office holders in the furtherance of the principles set out in section 7.

(2) Conforming to this Code does not absolve individual public office holders of the responsibility to take such additional action as may be necessary to prevent real, potential or apparent conflicts of interest.

(3) Conforming to this Code does not absolve public office holders from conforming to any specific references to conduct contained in the statutes governing their particular department or office and to the relevant provisions of legislation of more general application such as the *Criminal Code*, the *Canadian Human Rights Act*, the *Privacy Act*, the *Financial Administration Act* and the *Public Service Employment Act*.

6.(1) Nothing in this Code shall be interpreted in a way that would impede Ministers of the Crown and parliamentary secretaries in the performance of their duties as members of the Senate or the House of Commons.

(2) Conforming to this Code does not absolve Ministers of the Crown and parliamentary secretaries from conforming to the Standing Orders and Procedures of the Senate or the House of Commons, as the case may be, and to the conflict of interest provisions of the *Senate and House of Commons Act*.

PRINCIPLES

7. Every public office holder shall conform to the following principles:

(a) public office holders shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;

(b) public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;

(c) public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate;

(d) on appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest;

(e) public office holders shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public office holder;

(f) public office holders shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person;

(g) public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public;

(h) public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities; and

(i) public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

PROPAGATION

Certification

8.(1) Before or on assuming their official duties and responsibilities, Category A public office holders and Category B public office holders as defined in section 14 and public office holders as defined in section 54 shall sign a document certifying that they have read and understood this Code and that, as a condition of their holding office, they will observe this Code.

(2) Category A public office holders and Category B public office holders as defined in section 14 and public office holders as defined in section 54 shall sign the document described in subsection (1) within 120 days after the coming into force of this Code.

Annual Review

9. It is the responsibility of Category A public office holders and Category B public office holders as defined in section 14 and public office holders as defined in section 54 to review their obligations under this Code at least once a year.

Contracts

10.(1) It is the responsibility of every Category A public office holder and Category B public office holder as defined in section 14 who is negotiating a personal service contract to include in the contract appropriate provisions with respect to this Code in accordance with such directives as the Treasury Board may issue.

(2) Every Category A public office holder and Category B public office holder as defined in section 14 who is negotiating a government contract shall ensure that the contract includes safeguards, in accordance with such directives as the Treasury Board may issue, to prevent a former public office holder as defined in section 54, who does not comply with the compliance measures set out in Part III, from receiving benefit from the contract.

Education and Resource Centre

11.(1) The ADRG, in consultation with the Secretary of the Treasury Board, shall prepare informational and educational material about this Code for public office holders and the general public and, for the benefit of public officer holders, make appropriate arrangements for the preparation and implementation of training on conflict of interest and post-employment behaviour to promote compliance with the Code.

(2) The ADRG shall establish a resource centre of print, film, videotape and other material related to conflict of interest, post-employment behaviour and other ethical matters of concern to public office holders and to government.

SUPPLEMENTARY COMPLIANCE MEASURES

12.(1) The deputy head of a department in respect of whose employees the Treasury Board represents the Government as employer may augment the compliance measures set out in Parts II and III with supplementary procedures and guidance:

(a) respecting conflict of interest and post-employment situations peculiar to the unique and special responsibilities of the department; and

(b) reflecting any special requirements relating to employee conduct or interests contained in statutes governing the operations of the department.

(2) Before any supplementary procedures and guidance are implemented pursuant to subsection (1), Treasury Board approval is required.

DEALINGS WITH FORMER PUBLIC OFFICE HOLDERS

Obligation to Report

13.(1) Category A public office holders and Category B public office holders as defined in section 14 who have official dealings, other than dealings that consist of routine provision of a service to an individual, with former public office holders as defined in section 54, who are or may be governed by the measures set out in Part III, shall report those dealings to the designated official as defined in section 14.

(2) On receipt of a report under subsection (1), the designated official as defined in section 14 shall immediately determine whether the former public office holder as defined in section 54 is complying with the compliance measures set out in Part III.

(3) Category A public office holders and Category B public office holders as defined in section 14 shall not, in respect of a transaction, have official dealings with former public office holders as defined in section 54, who are determined pursuant to subsection (2) to be acting, in respect of that transaction, contrary to the compliance measures set out in Part III.

Part II

CONFLICT OF INTEREST COMPLIANCE MEASURES — GENERAL

INTERPRETATION

14. For the purposes of this Part and the Schedule,

"Category A public office holder" means:

(a) a Minister of the Crown;

(b) a parliamentary secretary designated as a Category A public office holder by the Minister of the Crown whom the parliamentary secretary assists;

(c) a senior member of ministerial exempt staff and, in addition, any other member of ministerial exempt staff designated by the appropriate Minister of the Crown as a Category A public office holder;

(d) subject to section 3, a full-time Governor in Council appointee, other than:

(i) a Lieutenant-Governor of a province,

(ii) a head of mission as defined in the *Department of External Affairs Act*,

(iii) a judge who receives a salary under the *Judges Act*, and

(iv) a commissioned officer of the Royal Canadian Mounted Police, other than the Commissioner of the Royal Canadian Mounted Police; or

(e) a full-time ministerial appointee designated by the appropriate Minister of the Crown as a Category A public office holder holder. (titulaire d'une charge publique de la catégorie A)

"Category B public office holder" means:

(a) an employee of a department for whom the Treasury Board represents the Government as employer;

(b) a head of mission as defined in the *Department of External Affairs Act*, and

(c) every member of ministerial exempt staff and every full-time ministerial appointee who is not designated as a Category A public office holder. (titulaire d'une charge publique de la catégorie B)

"designated authority" means:

(a) in respect of Category A public office holders and Category B public office holders described in paragraph (c) of the definition "Category B public office holder", the Prime Minister; and

(b) in respect of Category B public office holders described in paragraphs (a) and (b) of the definition "Category B public office holder", the Treasury Board. (autorité désignée)

"designated official" means:

(a) in respect of Category A public office holders and Category B public office holders described in paragraph (c) of the definition "Category B public office holder", the ADRG; and

(b) in respect of Category B public office holders described in paragraphs (a) and (b) of the definition "Category B public office holder", the deputy head of the office holder's department. (administrateur désigné)

"public office holder" means a Category A public office holder and a Category B public office holder. (titulaire d'une charge publique)

"Public Registry" means the registry where public documents are maintained by the ADRG for examination by the public. (Registre public)

OBJECT

15. This Part sets out the procedural and administrative requirements to be observed by public office holders in order to minimize the risk of conflict of interest and to permit the resolution of such conflicts of interest in favour of the public interest should any arise.

METHODS OF COMPLIANCE

16. The following conflict of interest compliance methods are used to comply with this Part:

(a) Avoidance, which is the avoidance of, or withdrawal from participation in, activities or situations that place public office holders in a real, potential or apparent conflict of interest relative to their official duties and responsibilities;

(b) Confidential Report, which is a written statement by a public office holder to a designated official of ownership of an asset, receipt of a gift, hospitality, or other benefit, or participation in any outside employment or activity. The designated official shall keep the statement confidential. Where a public office holder is subject to continuing direction in the performance of his or her official duties and responsibilities, a Confidential Report will, usually, be considered as compliance with the conflict of interest measures set out in this Part. In cases where a Confidential Report does not constitute such compliance, a Confidential Report is preliminary to a Public Declaration, resignation from activity or Divestment;

(c) Public Declaration, which is a written public statement by a public office holder of ownership of an asset, receipt of a gift, hospitality or other benefit, or participation in any outside employment or activity, where such ownership, receipt or participation could give rise to a conflict of interest or otherwise impair the ability of the public office holder to perform his or her official duties and responsibilities objectively; and

(d) Divestment, which is the sale at arm's length, or the placement in trust, of assets, where continued ownership by the public office holder would constitute a real or potential conflict of interest with the public office holder's official duties and responsibilities. The requirement to divest of such assets shall be determined in relation to the duties and responsibilities of the public office holder. For example, the more comprehensive the duties and responsibilities of the public office holder, the more extensive the Divestment needed and, conversely, the narrower the specialization of the duties and responsibilities of the public office holder, the narrower the extent of the Divestment needed.

17. Where there is doubt as to which method set out in section 16 is appropriate in order that a public office holder may comply with this Part, the designated official shall determine the appropriate method and, in doing so, shall try to achieve mutual agreement with the public office holder and shall take into account:

(a) the specific responsibilities of the public office holder;

(b) the value and type of the assets and interests involved; and

(c) the actual costs to be incurred by divesting the assets and interests as opposed to the potential that the assets and interests represent for a conflict of interest.

SALE FOR CIRCUMVENTION PROHIBITED

18. A public office holder shall not sell or transfer assets to family members or other persons for the purpose of circumventing the conflict of interest compliance measures set out in this Part.

EXEMPT ASSETS

19. Assets and interests for the private use of public office holders and their families and assets that are not of a commercial character are not subject to the methods set out in section 16. Such assets, hereinafter referred to as "exempt assets", include:

(a) residences, recreational property and farms used or intended for use by public office holders or their families;

(b) household goods and personal effects;

(c) works of art, antiques and collectibles;

(d) automobiles and other personal means of transportation;

(e) cash and deposits;

(f) Canada Savings Bonds and other similar investments in securities of fixed value issued or guaranteed by any level of government in Canada or agencies of those governments;

(g) registered retirement savings plans that are not self-administered;

(h) registered home ownership savings plans;

(i) investments in open-ended mutual funds;

(j) guaranteed investment certificates and similar financial instruments;

(k) annuities and life insurance policies;

(l) pension rights;

(m) money owed by a previous employer, client or partnership; and

(n) personal loans receivable from the members of the public office holder's immediate family and small personal loans receivable from other persons where the public office holder has loaned the moneys receivable.

CONFLICT OF INTEREST COMPLIANCE MEASURES — CATEGORY "A" PUBLIC OFFICE HOLDERS

DUTIES OF THE ADRG

20.(1) Under the general direction of the Clerk of the Privy Council, the ADRG is charged with the administration of this Code and the application of the conflict of interest compliance measures set out in this Part as they apply to Category A public office holders.

(2) Information concerning the private interests of a Category A public office holder provided to the ADRG is confidential until a Public Declaration, if any, is made with respect to that information.

(3) It is the responsibility of the ADRG to ensure:

(a) that information provided under subsection (2) is placed in personal confidential files and in secure safekeeping; and

(b) that any information provided by Category A public office holders for a public purpose is placed in personal unclassified files in the Public Registry.

METHODS OF COMPLIANCE

21. Compliance with the conflict of interest compliance measures set out in this Part for Category A public office holders is achieved, as required by sections 24 to 35, by the following methods set out in section 16:

(a) Avoidance;

(b) Confidential Report;

(c) Public Declaration;

(d) Divestment.

PUBLIC EVIDENCE OF COMPLIANCE

22.(1) Once the arrangements made by a Category A public office holder to comply with the conflict of interest compliance measures set out in this Part are completed, a Summary Statement described in subsection (2) and any Public Declaration made pursuant to section 25, 32 and 35 shall be signed by the office holder and a certified copy of the Statement and any Public Declaration shall be placed in the Public Registry.

(2) The Category A public office holder referred to in subsection (1) shall, in the Summary Statement,

(a) state the methods of compliance used to comply with the conflict of interest compliance measures set out in this Part; and

(b) certify that he or she is fully cognizant of the compliance measures set out in Part III.

(3) All arrangements made by a Category A public office holder to comply with the conflict of interest compliance measures set out in this Part shall be approved:

(a) in the case of Ministers of the Crown, by the Prime Minister; and

(b) in the case of all other Category A public office holders, by the ADRG.

TIME LIMITS

23. Unless otherwise authorized by the ADRG, every Category A public office holder shall,

(a) within 60 days after appointment, make a Confidential Report as required under sections 24 and 30;

(b) within 120 days after appointment,

(i) make a Public Declaration pursuant to section 25 and as required under section 32,

(ii) divest controlled assets as required under section 27, and

(iii) sign a Public Declaration and a Summary Statement for placing in the Public Registry pursuant to section 22;

(c) within 30 days after receipt of any gift, hospitality or other benefit, notify the ADRG as required under section 35; and

(d) within 60 days after receipt of any gift, hospitality or other benefit, make a Public Declaration as required under section 35.

ASSETS AND LIABILITIES

Confidential Report

24. A Category A public office holder shall make a Confidential Report to the ADRG of all assets that are not exempt assets as described in section 19 and of all direct and contingent liabilities. Assets that are not exempt assets are either "declarable assets" or "controlled assets" unless, after a Confidential Report, the ADRG determines that they are of such minimal value that they do not constitute any risk of conflict of interest.

Declarable Assets

25.(1) A Category A public office holder may elect to make a Public Declaration of assets that are not controlled assets, as defined under section 26, in order to allow the office holder to deal with those assets, subject only to exercising vigilance to ensure that such dealings cannot give rise to a conflict of interest.

(2) Declarable assets include:

(a) interests in family businesses and in companies that are of a local character, do not contract with the government, and do not own or control shares of public companies, other than incidentally, and whose stocks and shares are not traded publicly;

(b) farms under commercial operation;

(c) real property that is not an exempt asset as described in section 19; and

(d) assets that are beneficially owned, that are not exempt assets as described in section 19, and that are administered at arm's length.

(3) Declarable assets that are not publicly declared pursuant to subsection (1) shall, for the purposes of section 27, be considered to be controlled assets and divested.

Controlled Assets

26.(1) For the purposes of this section and section 27, "controlled assets" means assets that could be directly or indirectly affected as to value by Government decisions or policy.

(2) Controlled assets, other than assets that are determined under section 24 to be of minimal value, shall be divested.

(3) Controlled assets include:

(a) publicly traded securities of corporations and foreign governments;

(b) self-administered Registered Retirement Savings Plans, except when exclusively composed of exempt assets as described in section 19; and

(c) commodities, futures and foreign currencies held or traded for speculative purposes.

Divestment of Controlled Assets

27.(1) Subject to subsection (5), controlled assets are usually divested by selling them in an arm's length transaction or by making them subject to a trust arrangement, the most common of which are set out in the Schedule.

(2) Confirmation of sale and a copy of any executed trust instrument shall be filed with the ADRG. With the exception of a statement that a sale has taken place or that a trust exists, all information relating to the sale and the trust is confidential.

(3) For the purposes of this Code, trust arrangements shall be such that they do not leave in the hands of the Category A public office holder any power of management or decision over the assets placed in trust. The ADRG may serve as trustee of a frozen or retention trust but not of a blind trust.

(4) The ADRG has the responsibility for determining that a trust meets the requirements of this Code. Before a trust is executed or when a change from one trust option to another is contemplated a determination that the trust meets the requirements of this Code shall be obtained from the ADRG.

(5) Subject to the approval of the ADRG, a Category A public office holder is not required to divest controlled assets that are:

(a) pledged to a lending institution as collateral;

(b) of such value as to be practically non-marketable; or

(c) lost or not available for disposition by the office holder.

(6) On the recommendation of the ADRG, a Category A public office holder may be reimbursed for trust costs incurred in an amount set out in the Schedule.

OUTSIDE ACTIVITIES

General

28. Category A public office holders' participation in activities outside their official duties and responsibilities is often in the public interest. Subject to sections 29 to 32, such participation is acceptable where it is not inconsistent with their official duties and responsibilities and does not call into question their capacity to perform their official duties and responsibilities objectively.

Prohibited Activities

29. Subject to section 31, Category A public office holders shall not, outside their official duties,

(a) engage in the practice of a profession;

(b) actively manage or operate a business or commercial activity;

(c) retain or accept directorships or offices in a financial or commercial corporation;

(d) hold office in a union or professional association; or

(e) serve as a paid consultant.

Confidential Report of Outside Activities

30. Category A public office holders shall provide to the ADRG in a Confidential Report a listing of all their outside activities, including those in which they were engaged during the two year period before they assumed their official duties and responsibilities. That list shall include all involvements in activities of a philanthropic, charitable or non-commercial character and involvements as trustee, executor or under power of attorney.

31.(1) When the activities described in section 29 relate to the official duties and responsibilities of a Category A public office holder, the Category A public office holder may, in exceptional circumstances and with the approval required by subsection 22(3) become or remain involved in them, but may not accept remuneration for any activity, except as provided in subsection (3).

(2) A Category A public office holder may with the approval required by subsection 22(3) retain or accept directorships in organizations of a philanthropic, charitable or non-commercial character, but the office holder shall take great care to prevent conflict of interest from arising.

(3) Where the Prime Minister or a person designated by the Prime Minister is of the opinion that it is in the public interest, full-time Governor in Council appointees to Crown Corporations, as defined in the *Financial Administration Act*, may retain or accept directorships or offices in a financial or commercial corporation, and accept remuneration therefore, in accordance with compensation policies for Governor in Council appointees as determined from time to time.

Public Declaration of Outside Activities

32.(1) A Category A public office holder shall make a Public Declaration of the activities referred to in section 31 and of directorships and official positions listed in a confidential report under section 30.

(2) In co-operation with a Category A public office holder, the ADRG shall prepare the Public Declaration of outside activities to be made by that office holder.

GIFTS, HOSPITALITY AND OTHER BENEFITS

When Declined

33. Subject to section 34, gifts, hospitality or other benefits that could influence Category A public office holders in their judgment and performance of official duties and responsibilities shall be declined.

When Permissible

34.(1) Acceptance by Category A public office holders of offers of incidental gifts, hospitality or other benefits of nominal value arising out of activities associated with the performance of their official duties and responsibilities is not prohibited if such gifts, hospitality or other benefits:

(a) are within the bounds of propriety, a normal expression of courtesy or protocol or within the normal standards of hospitality;

(b) are not such as to bring suspicion on the office holder's objectivity and impartiality; and

(c) would not compromise the integrity of the Government.

(2) Official gifts, hospitality and other benefits of nominal value received from governments or in connection with an official or public event are permitted, as are gifts, hospitality and other benefits from family members and close friends.

Public Declaration Required

35.(1) Notwithstanding section 34, where a Category A public office holder directly or indirectly receives any gift, hospitality or other benefit that has a value of $200 or more, other than a gift, hospitality or other benefit from a family member or close friend, the Category A public office holder shall notify the ADRG and make a Public Declaration that provides sufficient detail to identify the gift, hospitality or other benefit received, the donor, and the circumstances.

(2) Where there is doubt as to the need for a Public Declaration or the appropriateness of accepting an offer of a gift, hospitality or other benefit, Category A public office holders shall consult the ADRG.

AVOIDANCE OF PREFERENTIAL TREATMENT

36.(1) A Category A public office holder shall not accord preferential treatment in relation to any official matter to family members or friends or to organizations in which they, family members or friends have an interest.

(2) A Category A public office holder shall take care to avoid being placed or the appearance of being placed under an obligation to any person or organization that might profit from special consideration on the part of the office holder.

FAILURE TO AGREE

37. Where a Category A public office holder and the ADRG disagree with respect to the appropriate arrangements necessary to achieve compliance with this Code, the appropriate arrangements shall be determined by the Prime Minister or by a person designated by the Prime Minister.

FAILURE TO COMPLY

38. Where a Category A public office holder does not comply with Parts I and II, the office holder is subject to such appropriate measures as may be determined by the designated authority, including, where applicable, discharge or termination of appointment.

SUBSEQUENT CHANGES

39. A Category A public office holder shall forthwith inform the ADRG of any changes in his or her assets, liabilities and outside activities that would be subject to a Confidential Report.

CONFLICT OF INTEREST COMPLIANCE MEASURES— CATEGORY "B" PUBLIC OFFICE HOLDERS

DUTIES OF THE DESIGNATED AUTHORITY

40. The designated authority may develop procedures and administrative arrangements for the implementation and administration of the conflict of interest compliance measures set out in this Part for Category B public office holders.

CONFIDENTIALITY

41. Information concerning the private interests of Category B public office holders provided to the designated official is confidential. It is the responsibility of the designated official to ensure that this information is placed in personal confidential files and in secure safekeeping.

METHODS OF COMPLIANCE

42. Compliance with the conflict of interest compliance measures set out in this Part for Category B public office holders is achieved, as required by sections 44 to 49, by the following methods set out in section 16:

(a) Avoidance;

(b) Confidential Report;

(c) Divestment.

TIME LIMITS

43. Unless otherwise authorized by the designated official, every Category B public office holder shall:

(a) within 60 days after appointment, make a Confidential Report as required under sections 44 and 47; and

(b) within 120 days after appointment, divest assets as required under section 46.

ASSETS AND LIABILITIES

Confidential Report

44. A Category B public office holder shall make a Confidential Report to the designated official of all assets that are not exempt assets as described in section 19 and of all direct and contingent liabilities, where such assets and liabilities might give rise to a conflict of interest in respect of the office holder's official duties and responsibilities.

Assets and Liabilities Subject to Confidential Report

45. Assets and liabilities described under section 44 include:

(a) publicly traded securities of corporations and foreign governments and self-administered Registered Retirement Savings Plans composed of such securities;

(b) interests in partnerships, proprietorships, joint ventures, private companies and family businesses, in particular those that own or control shares of public companies or that do business with the Government;

(c) farms under commercial operation;

(d) real property that is not an exempt asset as described in section 19,

(e) commodities, futures and foreign currencies held or traded for speculative purposes;

(f) assets that are beneficially owned, that are not exempt assets as described in section 19 and that are administered at arm's length;

(g) secured or unsecured loans granted to persons other than to members of the Category B public office holder's immediate family;

(h) any other assets or liabilities that could give rise to a real or potential conflict of interest due to the particular nature of the Category B public office holder's duties and responsibilities; and

(i) direct and contingent liabilities in respect of any of the assets described in this section.

Divestment of Assets

46.(1) A Category B public office holder shall divest assets where, following a Confidential Report, it is determined by the designated official that such assets constitute a real or potential conflict of interest. Such assets are usually divested either by selling them in an arm's length transaction or by making them subject to a trust arrangement, the most common of which are described in the Schedule.

(2) For the purposes of this Code, any trust arrangements shall be such that they do not leave in the hands of the Category B public office holder any power of management or decision over the assets placed in trust. The ADRG may serve as trustee of a frozen or retention trust but not of a blind trust.

(3) The ADRG has the responsibility for determining that a trust meets the requirements of this Code. Before a trust is executed or when a change from one trust option to another is contemplated, a determination that the trust meets the requirements of this Code shall be obtained from the ADRG.

(4) On the recommendation of the ADRG, the department of a Category B public office holder may reimburse the Category B public office holder for trust costs incurred in an amount set out in the Schedule.

OUTSIDE ACTIVITIES

47. Involvement in outside employment and other activities by Category B public office holders is not prohibited if such activities do not place on them demands inconsistent with their official duties and responsibilities or call into question their capacity to perform their

official duties and responsibilities objectively. It is the responsibility of a Category B public office holder to make a Confidential Report to the designated official of any outside activity in which the office holder is involved that is directly or indirectly related to the office holder's official duties and responsibilities. The designated official may require that such activity be curtailed, modified or cease when it has been determined that a real or potential conflict of interest exists.

GIFTS, HOSPITALITY AND OTHER BENEFITS

When Declined

48.(1) Subject to section 49, gifts, hospitality or other benefits that could influence Category B public office holders in their judgment and performance of official duties and responsibilities shall be declined.

(2) Acceptance, directly or indirectly, by Category B public office holders of any gifts, hospitality or other benefits not included under subsection 49(1) that are offered by persons, groups or organizations having dealings with the Government is not permitted.

When Permissible

49.(1) Acceptance by Category B public office holders of offers of incidental gifts, hospitality or other benefits of nominal value arising out of activities associated with the performance of their official duties and responsibilities is not prohibited if such gifts, hospitality or other benefits:

(a) are within the bounds of propriety, a normal expression of courtesy or protocol or within the normal standards of hospitality;

(b) are not such as to bring suspicion on the office holder's objectivity and impartiality; and

(c) would not compromise the integrity of the Government.

(2) Where it is impossible to decline unauthorized gifts, hospitality or other benefits, Category B public office holders shall immediately report the matter to the designated official. The designated official may require that a gift of this nature be retained by the department or be disposed of for charitable purposes.

AVOIDANCE OF PREFERENTIAL TREATMENT

50.(1) A Category B public office holder shall not accord preferential treatment in relation to any official matter to family members or friends or to organizations in which the office holder, family members or friends have an interest.

(2) A Category B public office holder shall take care to avoid being placed or the appearance of being placed under an obligation to any person or organization that might profit from special consideration on the part of the Category B public office holder.

(3) A Category B public office holder shall seek the permission of his or her supervisor before offering assistance in dealing with the Government to any individual or entity where such assistance is outside the official role of that Category B public office holder.

FAILURE TO AGREE

51. Where a Category B public office holder and the designated official disagree with respect to the appropriate arrangements necessary to achieve compliance with this Code, the disagreement shall be resolved through grievance procedures that have been established for the Category B public office holder.

FAILURE TO COMPLY

52. Where a Category B public office holder does not comply with Parts I and II, the office holder is subject to such appropriate measures as may be determined by the designated authority, including, where applicable, discharge or termination of appointment.

SUBSEQUENT CHANGES

53. A Category B public office holder shall forthwith inform the designated official of any changes in his or her assets, liabilities and outside activities that would be subject to a Confidential Report.

Part III

COMPLIANCE MEASURES FOR FORMER PUBLIC OFFICE HOLDERS AND PUBLIC OFFICE HOLDERS ANTICIPATING DEPARTURE FROM PUBLIC OFFICE

INTERPRETATION

54. For the purposes of this Part,

"designated authority" means

(a) the Prime Minister in the case of public office holders who are:

(i) Ministers of the Crown,

(ii) parliamentary secretaries,

(iii) full-time ministerial appointees,

(iv) members of ministerial exempt staff, designated by their Minister to be subject to this Part, and

(v) full-time Governor in Council appointees, other than commissioned officers of the Royal Canadian Mounted Police and heads of missions as defined in the *Department of External Affairs Act*;

(b) the Treasury Board in the case of public office holders:

(i) who are employees of a department for whom the Treasury Board represents the Government as employer, and

(ii) heads of missions as defined in the *Department of External Affairs Act*;

(c) the Minister of National Defence in the case of public office holders who are members of the Canadian Armed Forces; and

(d) the Commissioner of the Royal Canadian Mounted Police in the case of public office holders who are members of the Royal Canadian Mounted Police. (autorité désignée)

"designated official" means:

(a) in the case of a public office holder under paragraph (a) of the definition "designated authority", the ADRG under the general direction of the Clerk of the Privy Council;

(b) in the case of a public office holder under paragraph (b) of the definition "designated authority", the deputy head of the public office holder's department or a person designated by the deputy head to administer the Code;

(c) in the case of a public office holder under paragraph (c) of the definition "designated authority", the Chief of the Defence Staff or a person designated by the Chief of the Defence Staff to administer the Code, and

(d) in the case of a public office holder under paragraph (d) of the definition "designated authority", the person designated by the Commissioner of the Royal Canadian Mounted Police to administer the Code. (administrateur désigné)

"public office holder" means:

(a) a Minister of the Crown;

(b) a parliamentary secretary;

(c) a full-time Governor in Council appointee, other than a Lieutenant-Governor of a province and a judge who receives a salary under the *Judges Act*;

(d) an employee of a department classified at a level of, or above, Senior Manager, or the equivalent, for whom Treasury Board represents the Government as employer;

(e) every member of ministerial exempt staff designated by their Minister to be subject to this Part;

(f) a full-time ministerial appointee designated by their Minister to be subject to this Part;

(g) every member of the Canadian Armed Forces at a rank of, or above, Colonel, or the equivalent;

(h) a Commissioned Officer of the Royal Canadian Mounted Police; and

(i) every incumbent in a position designated pursuant to section 55. (titulaire d'une charge publique)

DESIGNATED POSITIONS

55.(1) Where a position in a department in respect of whose employees Treasury Board represents the Government as employer is classified at a level below Senior Manager, or the equivalent, and involves duties and responsibilities that raise post-employment concerns with respect to the possibilities set out in section 57, the Treasury Board may, on the recommendation of the Minister responsible for the department, designate that position as being subject to this Part.

(2) Where a position in the Canadian Armed Forces that is classified at a rank below the rank of Colonel, or the equivalent, involves the duties and responsibilities described in subsection (1), the Minister of National Defence may designate that position as being subject to this Part.

(3) Where a position in the Royal Canadian Mounted Police that is classified at a rank below Commissioned Officer involves the duties and responsibilities described in subsection (1), the Solicitor General may designate that position as being subject to this Part.

EXCLUSION

56.(1) The Treasury Board may, on the recommendation of the Minister responsible for a department in respect of whose employees the Treasury Board represents the Government as employer, exclude positions or groups of positions in that department that are classified at a level of, or above, Senior Manager, or the equivalent, from the application of sections 59 and 60 if the positions or groups of positions meet the conditions set out in subsection (4).

(2) The Minister of National Defence may exclude positions or groups of positions in the Canadian Armed Forces that are classified at a rank of and above Colonel, or the equivalent, from the application of sections 59 and 60, if the positions or groups of positions meet the conditions set out in subsection (4).

(3) The Solicitor General may exclude positions or groups of positions that are classified at a rank of Commissioned Officer from the application of sections 59 and 60, if the positions or group of positions meet the conditions set out in subsection (4).

(4) Positions or groups of positions may be excluded under subsections (1) to (3) if the positions or groups of positions:

(a) do not involve duties and responsibilities that raise post-employment concerns with respect to the possibilities set out in section 57; or

(b) are occupied by persons with knowledge and skills that, in the public interest, should be transferred rapidly from the Government to private and other governmental sectors.

OBJECTS

57. Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office. Observance of this Part will minimize the possibilities of:

(a) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public office holders while in public office;

(b) obtaining preferential treatment or privileged access to government after leaving public office;

(c) taking personal advantage of information obtained in the course of official duties and responsibilities until it has become generally available to the public; and

(d) using public office to unfair advantage in obtaining opportunities for outside employment.

COMPLIANCE MEASURES

Before Leaving Office

58.(1) Public office holders should not allow themselves to be influenced in the pursuit of their official duties and responsibilities by plans for or offers of outside employment.

(2) Subject to subsection (4), a public office holder shall disclose in writing to the designated official all firm offers of outside employment that could place the public office holder in a position of conflict of interest.

(3) Subject to subsection (4), a public office holder who accepts an offer of outside employment shall immediately disclose in writing to the designated official the acceptance of the offer. In such an event, where it is determined by the designated official that the public office holder is engaged in significant official dealings with the future employer, the public office holder shall be assigned to other duties and responsibilities as soon as possible. The period of time spent in public office following such an assignment shall be counted towards the limitation period on employment imposed under sections 60 and 61.

(4) Disclosure under subsections (2) and (3), shall be:

(a) in the case of Ministers of the Crown, to the Prime Minister;

(b) in the case of deputy heads, to a person designated by the Prime Minister;

(c) in the case of ministerial exempt staff, full-time ministerial appointees and full-time Governor in Council appointees other than those referred to in paragraph (b), to the appropriate Minister of the Crown; and

(d) in the case of parliamentary secretaries, to the Minister of the Crown whom the parliamentary secretary assists.

After Leaving Office

Prohibited Activities

59. At no time shall a former public office holder act for or on behalf of any person, commercial entity, association, or union in connection with any specific ongoing proceeding, transaction, negotiation or case to which the Government is a party:

(a) in respect of which the former public office holder acted for or advised a department; and

(b) which would result in the conferring of a benefit not for general application or of a purely commercial or private nature.

Limitation Period

60. Former public office holders, except for Ministers of the Crown for whom the prescribed period is two years, shall not, within a period of one year after leaving office,

(a) accept appointment to a board of directors of, or employment with, an entity with which they had significant official dealings during the period of one year immediately prior to the termination of their service in public office;

(b) make representations for or on behalf of any other person or entity to any department with which they had significant official dealings during the period of one year immediately prior to the termination of their service in public office; or

(c) give counsel, for the commercial purposes of the recipient of the counsel, concerning the programs or policies of the department with which they were employed, or with which they had a direct and substantial relationship during the period of one year immediately prior to the termination of their service in public office.

Reduction of Limitation Period

61.(1) On application from a public office holder or former public office holder, the designated authority may reduce the limitation period on employment imposed under section 60.

(2) In deciding whether to reduce the limitation period on employment imposed under section 60, the designated authority shall consider the following factors:

(a) the circumstances under which the termination of their service in public office occurred;

(b) the general employment prospects of the public office holder or former public office holder making the application;

(c) the significance to the Government of information possessed by the public office holder or former public office holder by virtue of that office holder's public office;

(d) the desirability of a rapid transfer from the Government to private or other governmental sectors of the public office holder's or former public office holder's knowledge and skills;

(e) the degree to which the new employer might gain unfair commercial advantage by hiring the public office holder or former public office holder;

(f) the authority and influence possessed by the public office holder or former public office holder while in public office; and

(g) the disposition of other cases.

(3) Decisions made by the designated authority shall be provided in writing to the applicant under subsection (1) and to all departments affected by the decision.

ADVISORY PANELS

62. The designated authority may convene advisory panels to advise the designated authority on the application of the compliance measures set out in this Part in particular cases and to help a public office holder or former public office holder understand how the compliance measures set out in this Part apply to his or her particular case. Advisory panels shall respond without delay to any requests for advice.

EXIT ARRANGEMENTS

63. Prior to a public office holder's official separation from public office, the designated official shall, in order to facilitate the observance of the compliance measures set out in this Part, communicate with the public office holder to advise about post-employment requirements.

RECONSIDERATION

64. A public office holder or former public office holder may apply to the designated authority for reconsideration of any determination respecting that office holder's compliance with this Part or any decision respecting the reduction of the limitation period. On receipt of an application for reconsideration, the designated authority may convene an advisory panel to make recommendations respecting the reconsideration.

FAILURE TO COMPLY

65. Where a public office holder does not comply with the compliance measures set out in this Part, the office holder is subject to such appropriate measures as may be determined by the designated authority, including, where applicable, discharge or termination of appointment.

Part IV

COMPLIANCE MEASURES FOR EMPLOYEES OF CROWN CORPORATIONS AND FOR PUBLIC OFFICE HOLDERS AS DEFINED IN SECTION 2 WHO ARE NOT SUBJECT TO PART II OR PART III

CROWN CORPORATIONS

66. Crown corporations that are subject to Divisions I to IV of Part XII of the *Financial Administration Act* shall be subject to compliance measures established by, and in accordance with, the established practices of their own organization.

LIEUTENANT-GOVERNORS OF A PROVINCE

67. Such provisions of the conflict of interest compliance measures set out in Part II as may be relevant shall be brought to the attention of Lieutenant-Governors at the time of their appointment.

CANADIAN ARMED FORCES

68. Part I applies to members of the Canadian Armed Forces but in lieu of the conflict of interest compliance measures set out in Part II, members of the Canadian Armed Forces shall be governed in accordance with the Code of Service Discipline and any regulations and orders made pursuant to the *National Defence Act* respecting conflict of interest.

ROYAL CANADIAN MOUNTED POLICE

69. Part I applies to members of the Royal Canadian Mounted Police but in lieu of the conflict of interest compliance measures set out in Part II, members of the Royal Canadian Mounted Police shall be governed in accordance with the conflict of interest provisions of the *Royal Canadian Mounted Police Act* and the Commissioner's Standing Orders.

INTERCHANGE CANADA

70.(1) Before entering into an Interchange Canada agreement to accept a person on assignment, the parties to the agreement shall satisfy themselves that there is no risk of conflict of interest or that the risk of conflict of interest is not significant. If the parties determine that the risk of conflict of interest is significant, the parties shall make such provisions as are necessary to prevent the conflict of interest from arising.

(2) Persons entering public office on an Interchange Canada assignment shall not act, after they leave such office, in such a manner as to take improper advantage of that office.

BOARDS, COMMISSIONS AND OTHER TRIBUNALS

71.(1) Officers, directors and employees of any federal board, commission or other tribunal as defined in the *Federal Court Act* shall be subject to the compliance measures established by their own board, commission or other tribunal.

(2) Federal boards, commissions and other tribunals as defined in the *Federal Court Act* shall establish, in consultation with the ADRG, written compliance measures that shall be adopted within one year of the coming into force of the Code and published in the first annual report of the board, commission or tribunal following the adoption of the compliance measures.

SEPARATE EMPLOYERS

72.(1) Part II in respect of Category B public office holders applies, with such modifications as the circumstances require, to the employees of a separate employer as defined in the *Public Service Staff Relations Act*, with the exception that the designated authority for such employees is the Chief Executive Officer, or the equivalent, of the separate employer.

(2) Part III applies, with such modifications as the circumstances require, to the employees of a separate employer as defined in the *Public Service Staff Relations Act* who are classified at a level of, or above, the equivalent of Senior Manager, with the exception that the designated authority for such employees is the Chief Executive Officer, or the equivalent, of the separate employer.

Part V

TRANSITION

73. Where a person has been appointed to hold office during good behaviour prior to the coming into force of this Code, adherence to the compliance measures set out in this Code is voluntary unless the public office holder is reappointed after the coming into force of this Code.

74. Where a Category A public office holder, Category B public office holder as defined in subsection 2(2) or a public office holder as defined in section 54 was, immediately prior to the coming into force of this Code, subject to any conflict of interest guidelines or post-employment guidelines of the Government, the public office holder shall continue to be subject to those guidelines, in lieu of this Code, until a review of his or her compliance arrangements under this Code is completed by the designated official. The designated official shall complete the review of those compliance arrangements within one year after the date that the public office holder signs a document pursuant to subsection 8(2).

Schedule

TRUSTS

1. The following trusts are examples of the most common trusts that may be established by public office holders for the purpose of divestment under the Code:

a) *BLIND TRUST*

A blind trust is one in which the trustee makes all investment decisions concerning the management of the trust assets with no direction from or control by the public office holder who has placed the assets in trust.

No information is provided to the public office holder (settlor) except information that is required by law to be filed. A public office holder who establishes a blind trust may receive any income earned by the trust, add or withdraw capital funds, and be informed of the aggregate value of the entrusted assets.

b) *FROZEN TRUST*

A frozen trust is one in which the trustee maintains the holdings essentially as they were when the trust was established. Public office holders who establish a frozen trust are entitled to any income earned by the trust.

Assets requiring active decision making by the trustee (such as convertible securities and real estate) or assets easily affected by Government action are not considered suitable for a frozen trust.

c) *RETENTION TRUST*

A retention trust is one in which the trustee maintains rights in holding companies, established for estate planning purposes, essentially as they were when the trust was established. The settlor makes arrangements to have third parties exercise his or her voting rights in relation to the shares in the holding company as long as such arrangements will not result in a conflict of interest. Retention trusts usually do not generate income for the settlor.

This form of divestment is useful for a public office holder who has assets to be held under special proper management through a holding company for estate planning purposes.

PROVISIONS COMMON TO ALL TRUSTS

2. Provisions common to all trusts are:

(a) Custody of the Assets:

The assets to be placed in trust must vest in the trustee.

(b) Power of Management or Control:

The public office holder (settlor) may not have any power of management or control over trust assets. The trustee, likewise, may not seek or accept any instruction or advice from the public office holder concerning the management or the administration of the assets.

(c) Schedule of Assets:

The assets placed in trust shall be listed on a schedule attached to the trust agreement.

(d) Duration of Trust:

The term of any trust is to be for as long as the public office holder who establishes the trust continues to hold an office that makes that method of divestment appropriate. A trust may be dismantled once the trust assets have been depleted.

(e) Return of Trust Assets:

Whenever a trust agreement is dismantled, the trustee shall deliver the trust assets to the public office holder.

TRUSTEES

3. Care must be exercised in selecting trustees for each type of trust arrangement. If a single trustee, other than the ADRG, is appointed, the trustee should be:

(a) a public trustee;

(b) a company, such as a trust company or investment company, that is public and known to be qualified in performing the duties of a trustee; or

(c) an individual who performs trustee duties in the normal course of his or her work.

4. If a single trustee is appointed he or she shall clearly be at arm's length from the public office holder.

5. If more than one trustee is selected, at least one of them shall be a public trustee or a company at arm's length from the public office holder.

TRUST INDENTURE

6. Acceptable blind, frozen and retention trust indentures are available from the ADRG. Any amendments to such trust indenture shall be submitted to the ADRG before it is executed.

FILING OF TRUST DOCUMENTS

7. Under the trust options available, public office holders are required to file with the ADRG a copy of any trust instrument. Except for the fact that a trust exists, detailed trust information will be kept in the public office holder's confidential file and will not be made available to anyone for any purpose.

REIMBURSEMENT FOR COSTS INCURRED

8. On the recommendation of the ADRG, the following reimbursements for costs of trusts established to comply with the Conflict of Interest Compliance Measures set out in this Code may be permitted:

(a) reasonable legal, accounting and transfer costs to establish the trust;

(b) reasonable legal, accounting and transfer costs to dismantle the trust; and

(c) annual, actual and reasonable costs to maintain and administer the trust, as follows:

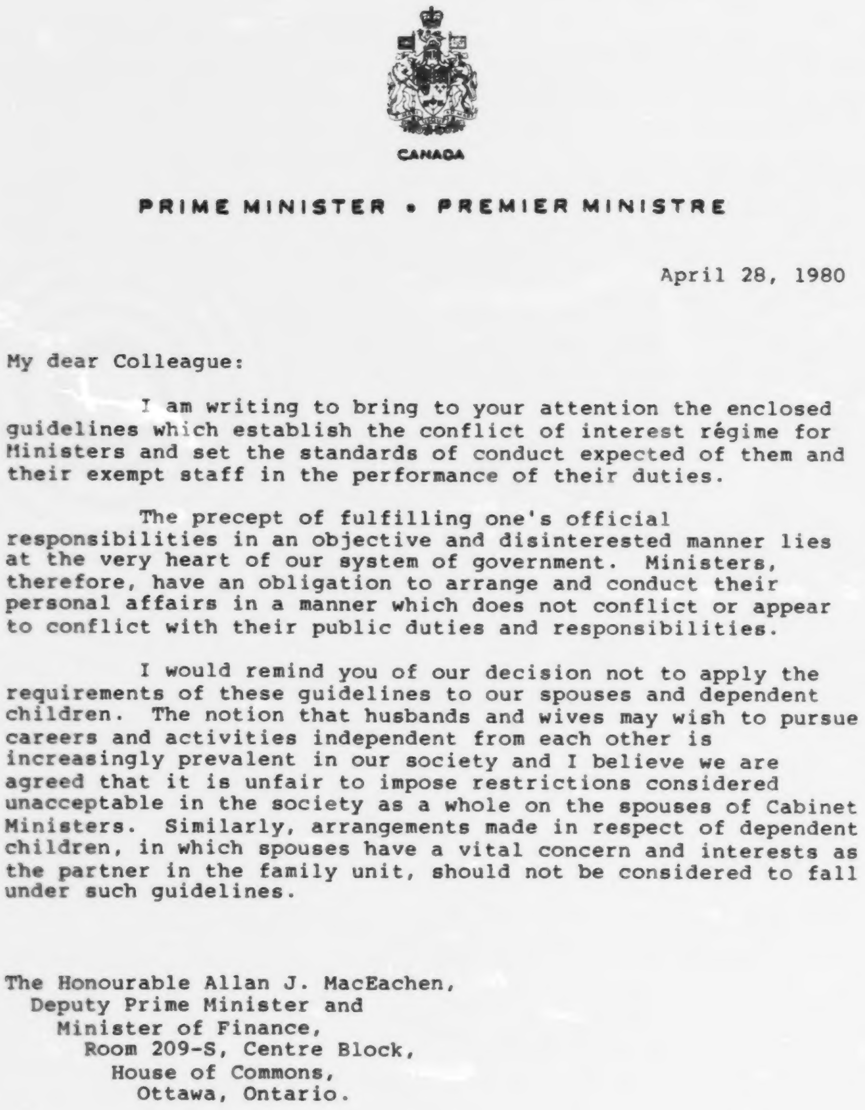
  (i) up to a maximum of $500 for a portfolio with a market value of $100,000 or less, or

  (ii) up to a maximum of $5,000 for a portfolio with a market value over $100,000, 1/2 of 1% on the first $400,000 and 1/4 of 1% on the remaining value.

The public office holder is responsible for any income tax adjustment that may result from the reimbursement of trust costs.

Appendix G

Letter of Prime Minister Pierre Elliott Trudeau, April 28, 1980



CANADA

PRIME MINISTER • PREMIER MINISTRE

April 28, 1980

My dear Colleague:

I am writing to bring to your attention the enclosed guidelines which establish the conflict of interest régime for Ministers and set the standards of conduct expected of them and their exempt staff in the performance of their duties.

The precept of fulfilling one's official responsibilities in an objective and disinterested manner lies at the very heart of our system of government. Ministers, therefore, have an obligation to arrange and conduct their personal affairs in a manner which does not conflict or appear to conflict with their public duties and responsibilities.

I would remind you of our decision not to apply the requirements of these guidelines to our spouses and dependent children. The notion that husbands and wives may wish to pursue careers and activities independent from each other is increasingly prevalent in our society and I believe we are agreed that it is unfair to impose restrictions considered unacceptable in the society as a whole on the spouses of Cabinet Ministers. Similarly, arrangements made in respect of dependent children, in which spouses have a vital concern and interests as the partner in the family unit, should not be considered to fall under such guidelines.

The Honourable Allan J. MacEachen,
Deputy Prime Minister and
Minister of Finance,
Room 209-S, Centre Block,
House of Commons,
Ottawa, Ontario.

This course of action does not, of course, relieve Ministers and those most closely related to them from the need to exercise vigilance and restraint in order to avoid apparent conflicts of interest. I am sure Ministers will be able to count upon the support of their families in meeting the high standards of conduct imposed upon them as the holders of public office.

Ministers must fully declare on a confidential basis their assets, liabilities and activities, including executorships and trusteeships, to the Assistant Deputy Registrar General within 60 days of appointment of the Cabinet or of coming into force of these Guidelines. Ministers must complete all arrangements necessary to achieve full compliance within 120 days of appointment or of the coming into force of these Guidelines.

I will soon be writing you at length about the conflict of interest requirements applicable to exempt staff members. I would like to take this opportunity, however, to ask you to ensure that all your exempt staff members understand that they are expected to meet the same high standards of conduct as do Ministers and that they must, as a basic requirement, comply with the Public Servants' Conflict of Interest Guidelines (PC-1973-4065).

It is also appropriate at this time to impress upon you, and through you on the members of your exempt staff, the importance of at all times avoiding any dealings with members of judicial or quasi-judicial bodies that might be construed as an improper interference with their proceedings.

Mr. D.R. Taylor, Assistant Deputy Registrar General (4th Floor, Trafalgar Building, 207 Queen Street, Ottawa, Ontario, K1A 0C9. Tel: 995-0721) will administer the enclosed guidelines on my behalf and any questions about their application may be addressed to him.

Sincerely,

Appendix H

Letter of Prime Minister Brian Mulroney, September 9, 1985

CANADA

PRIME MINISTER • PREMIER MINISTRE

September 9, 1985

AN OPEN LETTER TO MEMBERS OF PARLIAMENT AND SENATORS

Dear Colleagues:

It is a great principle of public administration -- I would even say an 'imperative' -- that to function effectively the government and the public service of a democracy must have the trust and confidence of the public they serve. In order to reinforce that trust, the government must be able to provide competent management and, above all, to be guided by the highest standards of conduct.

To this end, I am tabling today a set of documents providing detail on a package of major initiatives on public sector ethics now being undertaken by this Government. In this letter I wish to provide you with some thought in explanation of the documents, and to acquaint you with other elements of the package which will soon be put in documentary form. There are seven components in the overall program.

1. A new Conflict of Interest-Post-Employment Code for Public Office Holders **(tabled)**;
2. Instructions to Ministers imposing specific and strict limitations on the hiring of family members **(tabled)**;
3. Letters to Opposition Leaders on the subject of ethical standards for MPs and Senators **(tabled)**;
4. An experimental program of Parliamentary scrutiny of Governor in Council appointments;

5. The registration of lobbying activity;

6. Advice to Crown corporations respecting appropriate conduct in their dealings with the Government **(tabled)**; and,

7. A review of the judicial appointments process.

We have not made final decisions in all of the component areas, but we are putting forward an authoritative outline of our intentions. Some elements such as the new Conflict of Interest/Post-Employment Code for Public Office Holders are ready for implementation. The Code will take effect January 1, 1986, once the necessary infrastructure is in place. In the interim, Ministers and Governor in Council appointees will conduct themselves in accordance with its provisions. Other elements, such as the experimental program of Parliamentary oversight of Governor in Council appointments, will be refined through discussion with Opposition leaders and with the benefit of experience. Still others, such as the review of the judicial appointments process, will require more consultation before detailed proposals can be advanced.

The important point is that for the first time a government has placed before Parliament a comprehensive program of initiatives on public sector ethics. It provides tangible evidence to the people of Canada of the determination of this Government to ensure that its actions will be governed by the highest standards of conduct.

Let me deal with each component in turn.

1. CONFLICT OF INTEREST CODE

Among my first actions upon assuming office was to give the Deputy Prime Minister a mandate to:

> "[review] existing conflict of interest and post-employment guidelines ... with a view to making recommendations on whether any changes in the current two régimes are required."

The Deputy Prime Minister's recommendations provided the basis for the Conflict of Interest/Post-Employment Code tabled today.

The new Code represents a marked strengthening over the current régime. In particular:

- It covers a much broader population in definitive fashion than does the current régime. The principles apply to virtually everyone whose salary is paid for by the Canadian taxpayers. Notable exceptions are judges and the officers and employees of Parliament who have been excluded from the application of the Code for constitutional reasons. However, I have written to the Speakers suggesting that both Houses may wish to consider adopting a similar course in respect of those serving them. These letters are among the material to be tabled.

- It includes enforcement mechanisms, which are currently lacking in the post-employment régime. For example, public office holders are forbidden to deal with those operating in contravention of the post-employment provision.
- It places an absolute prohibition on switching sides, just as a lawyer is barred from changing from one side of a case to the other.
- It clearly allocates responsibility and provides for accountability.
- It is fairer to the individuals affected because it permits greater reasonableness in its application by taking into account both individual circumstances and the public interest.
- It is clearer and more precise, presenting in a single consolidated document what is currently found in five.

The precision and fairness of the new Code is important because, in the end, the success of the régime will depend upon the goodwill and the sense of public service of public office holders. The correct balance between fairness to the individual and protection of the public interest is delicate and difficult to attain, but I believe it exists in the new Code.

The first effort to provide ethical guidance to public office holders was made by Prime Minister Pearson more than two decades ago. This was followed by some improvements introduced by Prime Minister Trudeau a decade later. In developing the new Code we have been able to build on the Guidelines and the experience of working with them.

We have also had the advantage of being able to avail ourselves of the thinking and analysis that went into the Report of the Task Force on Conflict of Interest. I want again to pay tribute to the efforts of the Honourable Michael Starr, the Honourable Mitchell Sharp and, I must add, to those of our colleague the Honourable member for Etobicoke-Lakeshore who, in his previous capacity, acted as executive-director of the Task Force. These gentlemen will find some of their thinking and, on occasion, their very words enshrined in the new Code.

In short the new Code, while it bears the unmistakable stamp of this Government, is clearly an evolutionary step.

We have taken great pains to ensure that the new Code leaves no doubt that the ultimate responsibility for the ethical standards of the federal government rests with the Cabinet and, more particularly, with me.

In carrying out that responsibility the Government is directly accountable to Parliament and through Parliament to the people of Canada. You will find no quasi-independent agencies in this Code that will allow the Government to shirk its responsibility by saying that the problem belongs to someone else. Nor will you find anything which will relieve me and my colleagues of the necessity of exercising judgement. Obviously, from time to time, circumstances may arise that call for an impartial person to conduct and investigation as to fact. Instruments already exist which permit the Government to respond appropriately to such a requirement. But making use of these instruments will not relieve the Government of the responsibility to decide and to stand accountable before Parliament. The principles of responsible government and the supremacy of Parliament are respected and reinforced.

Although there are undoubtedly circumstances which demand such an approach, Canadian government have too often set up permanent quasi-independent agencies to deal with important areas of public policy. Rules and regulations become a substitute for the exercise of judgement. The intent has usually been to remove the matters concerned from the somewhat disorderly and often confusing arena of politics. The effect, all too frequently, has been simply to substitute an appointed decision-maker for an elected one, and to leave Parliament in the invidious and frustrating position of not being able to influence policy and not being able to exact accountability.

While ultimate accountability for ethical standards is that of the Government, the Code continues to place the onus of responsibility on the individual public office holder for his or her own conduct. What is expected of each individual is clearly stated in the Code, which also provides a clear basis for assessing those individual judgements, as well as prescribing penalties for those who fail to meet expected standards.

More streamlined, more equitable, yet stronger than previous efforts, I am convinced that this new Code represents a significant advance in the safeguarding of the public interest.

2. HIRING PRACTICES

I now wish to turn to the matter of the hiring of family members. The second half of the letter conveying the Conflict of Interest Code to Ministers contains my instructions to Ministers in this regard.

It has been the practice in Parliamentary democracies, even in those like Canada where an impartial appointment process covers the vast majority of positions in the public service, to reserve a number of key senior positions to be filled on a discretionary basis by the Government of the day.

There are important reasons of public policy for leaving certain appointments entirely to the judgement of the Government of the day. Governments change because the electors wish to see changes in public policy, and in the Government's methods of, and approaches to, dealing with the public.

The machinery of government is now so vast and complex that forty Cabinet Ministers acting without assistance could not hope rapidly to bring about desired changes in direction. to do so, they require the assistance of others of like mind, in whom they can have confidence, and who have the same commitment to change. That often means looking to political and even personal associates to undertake such duties -- competent, qualified people of like philosophy and approach. Custom and convention limit the degree of discretion to be exercised in some cases. Overall, the process of political accountability ensures that judgement will be weighted on the side of ability, qualification and competence. To act otherwise would be to invite embarrassment in Parliament and punishment for elected Members at the hands of the electorate -- to say nothing of placing the actual objectives of the Government at risk.

However, there are boundaries which should not be crossed in the exercise of this discretionary authority. My letter to Ministers sets them out in precise detail as they apply to family members. In summary, they are the following:

- No Cabinet Minister or department or agency subject to his or her direction should hire or contract with a member of his or her immediate family.

- No Cabinet Minister, or department or agency subject to his or her direction should, except through an impartially administered hiring process in which the Minister plays no part, hire or contract with members of the immediate family of her or her spouse, the immediate family of Cabinet colleagues, or of the immediate family members of caucus colleagues. An exception to this rule would be the hiring or contracting of ministerial exempt staff.

- The same impartial processes must be applied in the cases of organizations in which such family members hold senior positions of authority.

Obviously, there will be occasions in which it is in the public interest to act otherwise. My letter sets out the conditions under which such action may be contemplated.

I have done my best to reassure Canadians that favouritism will no govern the hiring practices of this Government without, at the same time, arbitrarily denying, to those whose fortune it is to be related to a member of the Government, the opportunity to serve their country.

3. STANDARDS OF ETHICAL CONDUCT FOR MPs AND SENATORS

In conjunction with the issuance of the Code, I have written to the Leaders of the Opposition parties to explore the desirability of working with the Government House Leader towards the adoption of similar standards of ethical conduct for all Members of Parliament.

It may be recalled that a Green Paper entitled Members of Parliament and Conflict of Interest was tabled by the President of the Privy Council in July 1973. This was referred to the Standing Committee on Privileges and Elections the following year and tabled in the Senate in 1975. In 1975 and 1976 the House Standing Committee on Privileges and Elections and the Senate Standing Committee on Legal and Constitutional Affairs submitted reports on the Green Paper. Neither report was debated in the respective Houses.

Later, an Independence of Parliament Act was given first reading in June 1978. Having been reintroduced in October, it was given second reading and was referred to the Sanding Committee on Privileges and Elections on March 9, 1979. This Bill died on the order paper when, eighteen days later, the session of Parliament ended.

It seems to me, at a time when the Government has taken on itself increased and more precise accountability for ethical standards, that Members of Parliament and Senators would find this to be an opportune time to examine their present rules to see whether they, too, should be brought up to date. I believe such action on their part would provide even more assurance to the public that all their elected representatives and those who have been chosen to serve their country in the Senate, are determined to govern themselves according to the highest standards.

4. PARLIAMENTARY SCRUTINY OF APPOINTMENTS

The fourth initiative in this package is that of beginning -- and I want to emphasize this -- on an experimental basis, the Parliamentary scrutiny of Governor in Council appointments.

The establishment of such a process was an undertaking made by this Government during the election campaign. Early in our mandate, we led the House of Commons in establishing a special committee under the chairmanship of the Honourable Member for St. John's East to provide recommendations on this and other matters of Parliamentary Reform. We took no action on the appointments process until we could benefit from the advice of that Committee. It has now presented its excellent report. I congratulate the Chairman, the Honourable James McGrath, and his colleagues from all parties, on the thoughtfulness and thoroughness with which they have addressed the issues, and on the creativity and originality of their thinking. The Government is, as I have said before, very favourable disposed towards the Committee proposals. My colleague, the President of the Privy Council, is hard at work on the Government's response.

In the interim, and as an earnest demonstration of our commitment, we have decided to offer the opportunity to review, on an experimental basis, all of the Governor in Council appointments made since this Government took office, and those to be made in the future.

I cannot provide immediately all of the details of the process. For one thing, we will be consulting with the Leaders of the Opposition parties. The process will, to some extent, be defined during those discussions. For example, there obviously will have to be parameters established about the appropriate lines of questioning to be pursued. We cannot look to the United States for a model because their system is so different from ours. Our deputy ministers, again as an example, have neither the right nor the responsibility to comment upon policies adopted or contemplated by the Government, except to explain. This alone will make for great differences with what we are accustomed to seeing take place across the border.

Because, to my knowledge, this approach has not been attempted in any other jurisdiction with a British Parliamentary form of government, we will have to move with some caution and with due regard to the fact we have embarked on a new path where the end is not in sight. Parliament is not an institution which responds well to radical changes in its operations. It is for that reason we will begin at a point short of where some believe we should end.

Some constitutional experts have warned me that I am wrong to take this step, that it is foreign to our system of government and incompatible with it. These gentlemen and I have agreed to differ, but I an not unconscious of the risks involved. That is why I am fully prepared to end this experiment and to re-think the approach if it seems to be taking a wrong turn.

I ask each if you to see this ground-breaking step for what it is -- an opportunity and a beginning -- and to work with my colleagues and me to ensure that it evolves into a process worthy of emulation by other Parliamentary democracies.

5. LOBBYING LEGISLATION

The fifth component of this comprehensive approach to public sector ethics is the undertaking of this Government to introduce into the House of Commons, at an early date, legislation to monitor lobbying activity and to control the lobbying process by providing a reliable and accurate source of information on the activities of lobbyists. We will require, among other things, paid lobbyists to register and identify their clients. This will enable persons who are approached by unions, and by agents on behalf of foreign governments and other foreign interests, to be clearly aware of who is behind the representation.

I have accordingly asked my colleague, the Minister of Consumer and Corporate Affairs, to prepare, on an urgent basis, legislation to govern lobbying activity.

This initiative should be be misinterpreted to mean that this Government is aware of particular improprieties in the conduct of lobbyists or that is considers lobbying to be an inappropriate activity. On the contrary, the practice of lobbying plays an important role in ensuring that government, in taking the decisions which affect the lives of all of us, are able to take properly into account the multitude of diverse interests involved. This Government is simply saying that something so important should not be shrouded in mystery.

6. ADVICE TO CROWN CORPORATIONS

On a related matter, and as the sixth component of this public sector ethics package, I have tabled a letter, which the Secretary to the Cabinet has written to the Presidents of all Crown corporations, advising them that this Government believes that the corporations' dealings with the Government should be conducted directly between their senior officers and members of the Government -- and without the use of intermediaries. I am sure that they will see the wisdom of the advice and act on it.

The practice, while not a new one, thankfully has not been widespread. Indeed, any instances have been exceptional. However, we do not through inaction wish to see it grow or continue. It is wasteful of pubic funds and a breach of the candid and direct (albeit arms-length) relationships which Parliament envisaged.

7. JUDICIAL APPOINTMENTS

Seventh, and finally, I wish to announce that my colleague the Minister of Justice has the judicial appointments process under active review. The Minister, from the outset of his mandate, has taken steps to improve the practice of consultation with the provinces, Bench and Bar.

One interesting approach that will assist the Minister in his review is a study of the matter recently completed by a Committee of the Canadian Bar Association. I wish to commend the Bar on its initiative and say that we will be following its review of the Committee's report, and awaiting its conclusions, with great interest. In the meantime, the Minister is proceeding forthwith with consultations in this area of vital importance.

Having dealt with each of its components in turn, may I say in conclusion that this package of reforms is evidence of the Government's intent to adopt ethical standards worthy of the respect of the Canadian people. In so doing, we wish to further the process of national renewal by revitalizing the faith of the citizens of this country in their institutions of government. Many of these steps are long overdue, and heaven knows this Government has had cause to regret their absence. But now they are in place, or in the process of being put in place, and we can look forward together to the dawning of a new day of trust and confidence.

Yours sincerely,

Appendix I

Blind Trust Agreement Between Sinclair McKnight Stevens and The National Victoria and Grey Trust Company

THIS AGREEMENT made this 19th day of October, 1984.

BETWEEN:

SINCLAIR McKNIGHT STEVENS, of the Township of King in the Regional Municipality of York and Province of Ontario herein called the Settlor,

OF THE FIRST PART

- and -

THE NATIONAL VICTORIA AND GREY TRUST COMPANY herein called the Trustee,

OF THE SECOND PART

WHEREAS the Settlor is subject to the Conflict of Interest Guidelines for Ministers of the Crown (herein called the "Guidelines");

AND WHEREAS the Settlor, in compliance with the Guidelines, has transferred to the Trustee the property set forth in Schedule "A" annexed hereto upon certain trusts herein set forth;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants herein contained, it is hereby mutually covenanted, agreed and acknowledged by and between the parties hereto that the said property, together with any other property which may from time to time be held by the Trustee in lieu thereof or in addition thereto (all of which is hereinafter referred to as the trust fund) shall be held by the Trustee upon the following trusts:

1. During the lifetime of the Settlor, to invest and keep invested the trust fund or the amount thereof from time to time remaining and to pay the net income therefrom to or for the Settlor; provided that the Trustee shall at any time or times pay to or for the Settlor such amount or amounts out of the capital of the trust fund as the Settlor may in writing direct; provided further that, during the obligatory trust period herein defined, any such payment out of capital shall be in cash only and not in specie.

2. Upon the death of the Settlor, to pay or transfer the trust fund or the amount thereof then remaining to the personal representatives of the Settlor to be dealt with as part of the estate of the Settlor, and the receipt of such personal representatives therefor shall be an absolute discharge to the Trustee.

3. The obligatory trust period shall be that period of time during which the Settlor shall be subject to the Guidelines.

4. Subject as herein provided, this Agreement is intended and is hereby declared to be irrevocable during the obligatory trust period and after the obligatory trust period, the Settlor may in writing revoke, alter or amend this Agreement in any manner whatsoever; provided that during the obligatory trust period, subject always to the provisions of the Guidelines, the Settlor and the Trustee by agreement in writing, may make alterations and amendments to this Agreement including such alterations and amendments as may be required from time to time under the terms of the Guidelines in furtherance of the policy to set out standards of conduct to be expected of persons subject to the Guidelines.

5. After the obligatory trust period, upon the revocation of this Agreement by the Settlor, the Trustee shall pay or transfer the trust fund or the amount thereof remaining to the Settlor.

6. Notwithstanding any rule of law or equity to the contrary, it shall be an express responsibility of the Trustee not to divulge to or otherwise inform the Settlor, directly or

indirectly, of any matter concerning the assets of the trust fund or the management of the trust fund, except as herein expressly provided; provided that the Trustee shall deliver to the Settlor annual statements showing only those cash amounts necessary to enable the Settlor to prepare the annual income tax return of the Settlor or to enable the Settlor to comply with any other legislation or legal requirements in force from time to time; provided further that the Trustee may at any time or times, upon the Settlor's request, inform the Settlor of the total value only of the trust fund.

7. Subject as provided in paragraph 6. hereof, the Settlor hereby expressly renounces any rights as Settlor and as beneficiary to an accounting by the Trustee of its administration of the trust fund until after the expiration of the obligatory trust period, and in particular, but not in limitation of the foregoing, hereby waives all rights as a settlor or beneficiary to require the accounts of the Trustee to be audited during the obligatory trust period by a judge having jurisidiction over such matters.

8. Notwithstanding the provisions of paragraph 7. hereof, the Settlor from time to time may engage an independent auditor to examine the accounts of the Trustee. Any expense in connection therewith, including the remuneration of such auditor, shall be paid by the Trustee and charged to the capital or income of the trust fund in such manner as the Trustee considers advisable. Upon the Trustee having obtained from such auditor an affidavit that he will not disclose any information concerning the trust fund or the accounts pertaining thereto which may be acquired by such auditor during such examination, other than to advise the Settlor whether in the opinion of such auditor such accounts are being properly kept, the Trustee, at such time or times as is convenient to it, shall make available to such auditor its accounts pertaining to the trust fund.

9. It is hereby acknowledged and agreed that the Trustee is empowered during the obligatory trust period to make all decisions concerning the management of the trust fund free

of direct or indirect control or influence by the Settlor and free of any duty or obligation whatsoever to inform, consult with or seek the advice of the Settlor directly or indirectly.

10. The Settlor hereby expressly releases, exonerates and absolves the Trustee from all liability to the Settlor and to the Settlor's executors, administrators or assigns for all acts or omissions of the Trustee during the obligatory trust period with the exception of fraudulent acts or omissions.

11. Subject to the foregoing provisions, the Trustee, in addition to all other power available to it by law or otherwise, shall have the power, authority and discretion as follows:

(a) To invest the cash funds from time to time constituting part of the trust fund in such investments as the Trustee in its absolute discretion considers advisable including, without limiting the generality of the foregoing, certificates or receipts of The National Victoria and Grey Trust Company issued for moneys received for guaranteed investment and the Trustee shall not be limited to investments authorized by law for Trustee.

(b) From time to time and at any time to sell, transfer, assign, exchange, convey, mortgage, lease or otherwise dispose of any of the property, securities or investments from time to time constituting the trust fund in any manner the Trustee may deem proper at any price and terms considered desirable by the Trustee, and the Trustee shall not be bound to secure the consent or approval of any person, official, authority, tribunal or Court whomever or whatsoever.

(c) To vote all stocks and shares, to exercise all rights, incidental to the ownership of stocks, shares, bonds or other securities and investments and property held as part of the trust fund, and to issue proxies to others; to sell or exercise any subscription rights and in connection with the exercise of subscription rights to use trust moneys for the purpose; to consent to and join in any plan, reorganization, readjustment or amalgamation or consolidation with respect to any corporation whose stock, shares, bonds or other securities at any time form part of the trust fund, and to authorize the sale of the undertaking or assets or a substantial portion of the undertaking or assets of any corporation, and generally to act in respect of the trust fund as fully and effectually from time to time as if the same were not trust property but always for the benefit of the trust fund.

(d) Any cash balances in the hands of the Trustee at any time may, pending investment, be held by The National Victoria and Grey Trust Company in its Savings Department and on such balances interest shall be paid at the rate prevailing from time to time computed in the usual manner.

(e) To borrow money upon the security of the assets of the trust fund in such manner, on such terms and conditions, for such length of time and for such purposes as the Trustee in its absolute discretion considers advisable.

12. The Settlor or any other party may at any time and from time to time add to the trust fund assets acceptable to the Trustee.

13. The Trustee shall retire upon the expiration of thirty days following the receipt of a written request to do so from the Settlor and the Trustee may resign upon the expiration of thirty days following the receipt of notice in writing to the Settlor. In the event of the retirement or resignation of the Trustee, the Settlor shall appoint, in compliance with the Guidelines, a succeeding Trustee.

Upon the retirement or resignation of the Trustee, as soon as conveniently may be, the Trustee shall submit its accounts for audit and passing and transfer the assets of the trust fund to the succeeding Trustee so appointed.

14. The remuneration of The National Victoria and Grey Trust Company shall be Fifty Dollars per annum plus Ten Dollars per transaction.

15. The National Victoria and Grey Trust Company shall be entitled to set aside and

apply for its own use absolutely (and not just as a reserve with respect to compensation to be claimed) such amounts out of the income and capital of the trust fund as The National Victoria and Grey Trust Company in its absolute discretion may determine from time to time on account of its remuneration, notwithstanding The National Victoria and Grey Trust Company shall have the use of the said funds prior to any order of any court of competent jurisdiction.

16. The trust established under this Agreement shall be deemed to be established under the laws of the Province of Ontario and this Agreement shall be governed by the laws of that Province.

17. For convenience, this trust shall be known as the Sinclair McKnight Stevens Blind Trust.

IN WITNESS WHEREOF the Settlor has hereunto set his hand and seal and the Trustee has hereunto affixed its corporate seal attested by the hands of its proper officers in that behalf.

SIGNED, SEALED AND DELIVERED)
in the presence of)

Joan Foulkes)

THE NATIONAL VICTORIA AND GREY TRUST COMPANY

APPROVED
FOR EXECUTION
[illegible] T. CO.

VICE-PRESIDENT, PERSONAL SERVICES

VICE-PRESIDENT AND ASSISTANT SECRETARY

SCHEDULE "A"

This is Schedule "A" annexed to the Agreement dated the 19th day of October, A.D. 1984, made between Sinclair McKnight Stevens as Settlor and The National Victoria and Grey Trust Company as Trustee.

81	common	shs.	Gill Construction Ltd.
20,500	preference	shs.	Gill Construction Limited
			The National Victoria and Grey Trust Company - Self-Administered R.R.S.P. containing $549.03 cash and 13,800 shs. York Centre Corp.

Appendix J

The Criminal Code: Sections 110(1), (2), (3); 111

110. (1) **[Frauds upon the government]** Every one commits an offence who

(*a*) directly or indirectly

(i) gives, offers, or agrees to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or

(ii) being an official, demands, accepts or offers or agrees to accept from any person for himself or another person,

a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(iii) the transaction of business with or any matter of business relating to the government, or

(iv) a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,

whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

(*b*) having dealings of any kind with the government, pays a commission or reward to or confers an advantage or benefit of any kind upon an employee or official of the government with which he deals, or to any member of his family, or to any one for the benefit of the employee or official, with respect to those dealings, unless he has the consent in writing of the head of the branch of government with which he deals, the proof of which lies upon him;

(*c*) being an official or employee of the government, demands, accepts or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies upon him;

(*d*) having or pretending to have influence with the government or with a minister of the government or an official, demands, accepts or offers or agrees to accept for himself or another person a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(i) anything mentioned in subparagraph (*a*)(iii) or (iv), or

(ii) the appointment of any person, including himself, to an office;

(*e*) offers, gives or agrees to offer or give to a minister of the government or an official a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(i) anything mentioned in subparagraph (*a*)(iii) or (iv), or

(ii) the appointment of any person, including himself, to an office; or

(*f*) having made a tender to obtain a contract with the government

(i) gives, offers or agrees to give to another person who has made a tender, or to a member of his family, or to another person for the benefit of that person, a reward, advantage or benefit of any kind as consideration for the withdrawal of the tender of that person, or

(ii) demands, accepts or agrees to accept from another person who has made a tender a reward, advantage or benefit of any kind as consideration for the withdrawal of his tender.

(2) **[Contractor subscribing to election fund]** Every one commits an offence who, in order to obtain or retain a contract with the government, or as a term of any such contract, whether express or implied, directly or indirectly subscribes, gives, or agrees to subscribe or give, to any person any valuable consideration

(*a*) for the purpose of promoting the election of a candidate or a class or party of candidates to the Parliament of Canada or a legislature, or

(*b*) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in the Parliament of Canada or a legislature.

(3) **[Punishment]** Every one who commits an offence under this section is guilty of an indictable offence and is liable to imprisonment for five years.

1953–54, c. 51, art. 102.

111. [Breach of trust by public officer] Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

1953–54, c. 51, art. 103.

Appendix K

Rulings

1. Ruling Regarding Television in the Hearing Room, July 14, 1986

THE COMMISSIONER: Over the lunch hour, I considered this matter and I am reminded that this is not a trial; it is an inquiry to ascertain facts under the Public Inquiries Act. As such, it is in the public interest that the hearing be open to the public as much as possible. We are dealing with a public matter that took place in a televised forum. Under the circumstances, I think it is in the public interest that television be allowed in the hearing room under controlled conditions. If any witness objects, that witness can make a submission, and I will consider whether the objection is for a legitimate reason. I say "under controlled conditions." I understand that, if permission is granted, only one camera will be used in the hearing room.

(Transcript, vol. 2, p. 137)

2. Ruling Regarding Funding of Parties, August 20, 1986

THE COMMISSIONER: I am not going to reserve my decision on this matter.

This Commission was appointed by Parliament to inquire into the facts and to make recommendations. It was my responsibility to appoint counsel, and I have done so. It is the responsibility of those counsel to inquire into all the facts. I take the responsibility for their actions. I feel they are attempting to be fair and to bring out all the facts.

Some counsel are here because they represent various parties who may be affected by the outcome of this Commission. They, perhaps, are in a different position than some of the other counsel who appear for witnesses, say, who are only here to advise their client while that client is giving evidence. Then, again, there are counsel here who have standing because they are interested in the Commission, but they do not act for parties that are being affected or may be affected.

The two that have asked for funding so far are in the last category. They are not acting for parties that may be directly affected by the outcome in the sense that Mr. Stevens is. It is true that, on occasion, funding has been granted to parties. In certain circumstances funding may be justified. A clear case, it would seem to me, would be the inquiry into the Hospital for Sick Children where certain persons were funded for their costs.

However, so far as this Inquiry is concerned, the terms of reference themselves make no reference to public funding. It would, therefore, seem to be in my discretion whether or not I recommend to the government that funding be provided to the applicants. I am not satisfied that such a request is justified under the present circumstances and I decline to recommend.

(Transcript, vol. 23, pp. 3747–49)

3. Ruling Regarding an Application for Letters of Request, an Application to Quash a Subpoena, and the Relevance of Certain Evidence Relating to the Chase Manhattan Bank, October 28, 1986

THE COMMISSIONER: This is an application by Commission counsel to issue a letter of request directed to the judicial authorities of the United States of America with regard to certain evidence of the Chase Manhattan Bank, and also an application to quash a subpoena issued to Noreen Stevens.

Commission counsel submitted that there were two issues that must be satisfied before the request to issue a letter of request is granted. First, the evidence requested should be relevant, and, second, that the court applied to would likely grant my request.

The evidence indicates that Mr. and Mrs. Stevens were present at a meeting at the office of Chase Manhattan with James Stewart, an employee of Chase Manhattan, when government business was discussed. At this time, the appointment of Chase Manhattan as a consultant regarding the privatization of Sysco and the sale of the Candu reactor to Turkey was under consideration. At the meeting in New York, private business relating to the sale of commemorative gold coins and their redemption by stripped bonds was also discussed. The purchase and sale of stripped bonds was part of the business of Georgian Equity, one of the York Centre group of companies.

Subsequently, Chase Manhattan advised Mr. and Mrs. Stevens that they were not interested in the project. Chase Manhattan was never retained as a consultant, and the concept of selling gold coins was never carried out by any company in the York Centre group.

Commission Counsel submits that the evidence sought indicates an apparent or actual conflict of interest by mingling of government and private business, which was a subject matter of some allegations. It is evidence which might indicate that a blind trust was not blind and that the Minister was engaged in discussions which might generate income for a company in which he had an interest.

Counsel for Mr. Stevens submitted that the requirement of relevance was common to both the application for letters of request and the application to quash the subpoena. He submitted that any investigation was restricted to three specific allegations relating to conflict of interest and that evidence of a breach of a blind trust was only relevant if it related to one of the three. He further submitted that the alleged breach did not relate to one of these allegations and, therefore, it was not relevant.

I cannot agree that any inquiry is limited to the three specific incidents he refers to.

Counsel for Mr. Stevens further submitted that a Commission had no power to issue a letter of request; that, if issued, it would not be enforced by an American court; and to issue a request under such circumstances would serve no useful purpose.

Counsel for Mrs. Stevens, on his application to quash the subpoena served on his client, supported the submissions of counsel for the Minister and pointed out that the list of allegations, although it contained allegations relating to the blind trust, contains no allegation relating to Chase Manhattan. He further submitted that even if the evidence might be marginally relevant, where the time, effort and cost of acquiring such evidence outweighs its probative value, I have a discretion to exclude it or to quash a subpoena.

I find that section 5 of the Inquiries Act is broad enough to allow a Commissioner to issue a letter of request and that I have the power to do so. However, the exercise of that power should not be lightly invoked. There must be two aspects to create conflict of interest, one public and the other private. Here there is evidence that private business was contemplated. There is also evidence to indicate that the Minister was interested in appointing Chase Manhattan as an adviser. This could create the appearance of conflict and had the potential for potential conflict. The evidence is, therefore, relevant.

The evidence sought, although relevant, is not of sufficient weight to justify asking a foreign court to take evidence. To issue a request based on the evidence available might appear to a foreign court to be an abuse of the comity extended. The application to issue a letter of request is, therefore, refused; the application to quash the subpoena is also dismissed.

(Transcript, vol. 12, in-camera, pp. 789–92)

4. Ruling Regarding the Preservation of the Identities of Confidential Sources, October 28, 1986

THE COMMISSIONER: I am very conscious of the fact that there are actions pending and that this matter will no doubt be raised in those actions. The Commission Counsel has already interviewed the persons regarding the factual situation. Who advised the reporter of the situation is not really relevant as to whether or not there was a conflict of interest. I can understand it being of interest to Mr. Stevens, particularly in his action, because at that time he will be concerned about whether or not there is bias and other matters, but I do not think it is necessary for these proceedings.

Even if it were, I might have some hesitation in ordering the reporter to disclose it if I balance the good and the bad results. So, I will not order the witness to answer the question.

(Transcript, vol. 58, pp. 10,255–6)

Sources for the Study of Conflict of Interest

The following is a short list of materials on conflict of interest gathered by the Commission and pertaining to Canada and other countries. The first section consists of primary materials — legislation, regulations, testimony, or reports by government-sponsored bodies — organized by jurisdiction. The second section consists of a selective list of secondary literature on the subject.

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